(4)

Supreme Court, U.S.
FILED
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# No. 94-325

In The

# Supreme Court of the United States

October Term 1994

CHANDRIS, INC., CHANDRIS, S.A. and FOURTH TRANSOCEANIC SHIPPING CO., LTD.,

*Petitioners,*

v.

ANTONIOS LATSIS,

*Respondent.*

**On Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit**

## JOINT APPENDIX

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**Petition For Certiorari Filed August 22, 1994**
**Certiorari Granted October 17, 1994**

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THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTONIOS LATSIS,
Plaintiff,

v.

CHANDRIS, INC., CHANDRIS, S.A. and TRANS OCEANIC SHIPPING CO., LTD.,
Defendants.
_____/

Case No.
91-CV-6900

**RELEVANT DOCKET ENTRIES**

| | | |
|---|---|---|
| 10/16/91 | 1 | COMPLAINT filed; Summons issued and Notice pursuant to 28 U.S.C. 636(c); FILING FEE $ 120 RECEIPT # 46437 (md) [Entry date 10/21/91] |
| 3/17/92 | 4 | AMENDED COMPLAINT by Antonios Latsis, (Answer due 3/27/92 for Chandris, Inc.) amending [1-1] complaint against Trans Oceanic Shippi; Summons issued. (do) [Entry date 03/20/92] |
| 6/2/93 | 18 | ANSWER to Complaint by Chandris, Inc. (Attorney William J. Brady III),; by attorney William J. Brady III for defendant Chandris, Inc. (ys) [Entry date 06/03/93] |
| 6/2/93 | 19 | AMENDED ANSWER to Complaint by Chandris, Inc., Trans Oceanic Shippi : amends [18-1] answer (ys) [Entry date 06/03/93] |

6/11/93 – Jury trial conccluded on 6/11/93. Judge's Decision Reserved 6/10/93 on Defts Motion to dismiss. Jury Verdict: in favor of the defts. Cmplt is dismissed (mk)

6/17/93 20 JUDGMENT # for Chandris, Inc., Trans Oceanic Shipping Co., Ltd. against Antonios Latsis . . . that the complaint is dismissed in its entirety. (signed by JAMES PARKISON, CLERK, USDC); Mailed copies and notice of right to appeal. EOD: 6/17/93 (sc)



UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

ANTONIOS LATSIS,
Plaintiff-Appellant,

v.

CHANDRIS, INC., CHANDRIS, S.A. and TRANS OCEANIC SHIPPING CO., LTD.,
Defendants-Appellees.
_____/

Docket No.
93-7704

**RELEVANT DOCKET ENTRIES**

3/24/94 Judgment VACATED & CASE REMANDED FOR RETRIAL WITH INSTRUCTIONS TO THE JURY IN ACCORDANCE WITH THIS OPINION, by published signed opinion filed per Judge Oakes. (ono)

3/24/94 Judge Kearse DISSENTING in a separate opinion filed. (ono)

3/24/94 Judgment filed. (ono)

5/24/94 Order FILED DENYING petition for REHEARING and suggestion for rehearing in banc [506831-1] by Appellee Trans Oceanic, Chandris, S.A., Chandris, Inc. [506831-2] (onc)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____X

ANTONIOS LATSIS,

Plaintiff,

-against-

CHANDRIS, INC.,

Defendant.

_____X

COMPLAINT

PLAINTIFF REQUESTS A TRIAL BY JURY

ANTONIOS LATSIS, by his attorneys, SHAPIRO, SHIFF, BEILLY, ROSENBERG & FOX, complaining of the defendant CHANDRIS, INC. upon information and belief, alleges as follows:

FIRST: This action arises under Section 33 of the Merchant Marine Act of 1920, 46 U.S.C. Section 688, as hereinafter more fully appears.

SECOND: At all times hereinafter mentioned, plaintiff, ANTONIOS LATSIS, resided at 9 Robert Crisfield Place, City of Rye, State of New York.

THIRD: At all times hereinafter mentioned, defendant, CHANDRIS, INC. is and remains a domestic corporation duly organized and existing under the laws of the State of New York.

FOURTH: At all times hereinafter mentioned, defendant, CHANDRIS, INC. is and remains a foreign corporation licensed and authorized to do business in the State of New York.



FIFTH: At all times hereinafter mentioned, defendant, CHANDRIS, INC., transacted business in the State of New York.

SIXTH: At all times hereinafter mentioned, defendant, CHANDRIS, INC. maintained an office of business at 900 Third Avenue, City and State of New York.

SEVENTH: At all times hereinafter mentioned, the defendant, CHANDRIS, INC., was the owner of the cruiseship S/S GALILEO and used it in the transportation of passengers for hire by water in interstate and foreign commerce.

EIGHTH: During the first part of January, 1989, plaintiff, ANTONIOS LATSIS, entered the employment of the defendant as a "seaman", engaged to provide maritime engineering consulting services while on board the aforementioned vessel.

NINTH: On or about May 12, 1989, plaintiff, ANTONIOS LATSIS, boarded the defendant's vessel, S/S GALILEO, in his capacity as maritime engineering consultant for a voyage from Baltimore, Maryland to the isle of Bermuda.

TENTH: At all times hereinafter mentioned, the defendant provided to its seamen and others a physician(s) to perform necessary and proper functions pertaining to diagnosing and treating diseases and pathological conditions of the human body.

ELEVENTH: On or about May 14, 1989, said vessel was approximately two (2) days out of port of Baltimore, Maryland and was being navigated by the master and crew.

TWELFTH: On or about May 14, 1989, plaintiff sought the professional care of the defendant's physician(s) for the medical complaints from which he was suffering.

THIRTEENTH: The aforesaid medical care, diagnosis, treatment and services were rendered carelessly, unskillfully and negligently and not in accord with accepted standards for medical care in the community.

FOURTEENTH: That such negligence and malpractice was committed by the defendant's physician(s) in the scope of his/her employment of the defendant, CHANDRIS, INC.

FIFTEENTH: As a result of defendant's negligence, plaintiff was directed to remain on board of said vessel for period of two (2) days without the required prompt and proper medical and surgical attendance. During said time, plaintiff was suffering great physical and mental pain and was in need of immediate medical and surgical attendance, but defendant negligently failed to furnish plaintiff with such medical aid and attention or to transport him to an available health facility nearby.

SIXTEENTH: By reason of the aforementioned failure and negligence on the part of the defendant, plaintiff's injuries were greatly enhanced, aggravated and extended and he has thereby sustained permanent and incurable injury.

WHEREFORE, plaintiff, ANTONIOS LATSIS, demands judgment against defendant, CHANDRIS, INC., in the sum of ONE MILLION DOLLARS ($1,000,000.00), together with the costs and disbursements of this action.



Plaintiff further requests a trial by jury on all issues of fact stated herein.

Dated: New York, New York
October 15, 1991

SHAPIRO, SHIFF, BEILLY,
ROSENBERG & FOX

By: /s/ _____
LEWIS ROSENBERG (LR5791)
Attorney for Plaintiff
ANTONIOS LATSIS
225 Broadway - Suite 1115
New York, New York 10007
(212) 267-9020

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

ANTONIOS LATSIS,

Plaintiff,

-against-

CHANDRIS, INC., CHANDRIS, S.A. and TRANS OCEANIC SHIPPING CO., LTD.,

Defendants.

X

AMENDED COMPLAINT
91 CIV. 6900 (LMM)

PLAINTIFF REQUESTS A TRIAL BY JURY

ANTONIOS LATSIS, by his attorneys, SHAPIRO, SHIFF, BEILLY, ROSENBERG & FOX, complaining of the defendant CHANDRIS, INC. upon information and belief, alleges as follows:

FIRST: This action arises under Section 33 of the Merchant Marine Act of 1920, 46 U.S.C. Section 688, as hereinafter more fully appears.

SECOND: At all times hereinafter mentioned, plaintiff, ANTONIOS LATSIS, resided at 9 Robert Crisfield Place, City of Rye, State of New York.

THIRD: At all times hereinafter mentioned, defendant, CHANDRIS, INC. was and remains a domestic corporation duly organized and existing under the laws of the State of New York.

FOURTH: At all times hereinafter mentioned, defendant, CHANDRIS, S.A. was and remains a foreign corporation.



FIFTH: At all times hereinafter mentioned, defendant, TRANS OCEANIC SHIPPING CO., LTD., was and remains a foreign corporation.

SIXTH: At all times hereinafter mentioned, defendant, CHANDRIS, INC., transacted business in the State of New York.

SEVENTH: At all times hereinafter mentioned, defendant, CHANDRIS, S.A., transacted business in the State of New York either directly for TRANS OCEANIC SHIPPING CO., LTD. or through its agent, CHANDRIS, INC.

EIGHTH: At all times hereinafter mentioned, defendant, TRANS OCEANIC SHIPPING CO., LTD., transacted business in the State of New York either directly for CHANDRIS, S.A. or through its agent, CHANDRIS, INC.

NINTH: At all times hereinafter mentioned, defendant, CHANDRIS, INC., maintained an office of business at 900 Third Avenue, City and State of New York.

TENTH: At all times hereinafter mentioned, the defendant, CHANDRIS, INC., was the owner of the cruise ship S/S GALILEO and used it in the transportation of passengers for hire by water in interstate and foreign commerce.

ELEVENTH: At all times hereinafter mentioned, the defendant, CHANDRIS, S.A., was the owner of the cruise ship S/S GALILEO and used it in the transportation of passengers for hire by water in interstate and foreign commerce.

TWELFTH: At all times hereinafter mentioned, the defendant, TRANS OCEANIC SHIPPING CO., LTD., was the owner of the cruise ship S/S GALILEO and used it in

the transportation of passengers for hire by water in interstate and foreign commerce.

THIRTEENTH: During the first part of January, 1989, plaintiff, ANTONIOS LATSIS, entered the employment of the defendant, CHANDRIS, INC., acting as principal or manager or agent for defendants, CHANDRIS, S.A. and/or TRANS OCEANIC SHIPPING CO., LTD., as a "seaman", engaged to provide maritime engineering consulting services while on board the aforementioned vessel.

FOURTEENTH: On or about May 12, 1989, plaintiff, ANTONIOS LATSIS, boarded the defendants' vessel, S/S GALILEO, in his capacity as maritime engineering consultant for a voyage from Baltimore, Maryland to the isle of Bermuda.

FIFTEENTH: At all times hereinafter mentioned, the defendants provided to its seamen and others a physician(s) to perform necessary and proper functions pertaining to diagnosing and treating diseases and pathological conditions of the human body.

SIXTEENTH: On or about May 14, 1989, said vessel was approximately two (2) days out of port of Baltimore, Maryland and was being navigated by the master and crew.

SEVENTEENTH: On or about May 14, 1989, plaintiff sought the professional care of the defendants' physician(s) for the medical complaints from which he was suffering.

EIGHTEENTH: The aforesaid medical care, diagnosis, treatment and services were rendered carelessly,



unskillfully and negligently and not in accord with accepted standards for medical care in the community.

NINETEENTH: That such negligence and malpractice was committed by the defendants' physician(s) in the scope of his/her employment of the defendants.

TWENTIETH: As a result of defendants' negligence, plaintiff was directed to remain on board of said vessel for a period of two (2) days without the required prompt and proper medical and surgical attendance. During said time, plaintiff was suffering great physical and mental pain and was in need of immediate medical and surgical attendance, but defendant negligently failed to furnish plaintiff with such medical aid and attention or to transport him to an available health facility nearby.

TWENTY-FIRST: By reason of the aforementioned failure and negligence on the part of the defendants, plaintiff's injuries were greatly enhanced, aggravated and extended and he has thereby sustained permanent and incurable injury.

WHEREFORE, plaintiff, ANTONIOS LATSIS, demands judgment against defendants, in the sum of ONE MILLION DOLLARS ($1,000,000.00), together with the costs and disbursements of this action.

Plaintiff further requests a trial by jury on all issues of fact stated herein.

Dated: New York, New York
March 12, 1992

SHAPIRO, SHIFF, BEILLY,
ROSENBERG & FOX

By: /s/ _____
LEWIS ROSENBERG
(LR-5791)
Attorney for Plaintiff
ANTONIOS LATSIS
225 Broadway – Suite 1115
New York, New York 10007
(212) 267-9020

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____X

ANTONIOS LATSIS,

Plaintiff,

-against-

CHANDRIS, INC.,

Defendant.

_____X

Index No. 91 Civ. 6900

ANSWER

TO: SHAPIRO, SHIFF, BEILLY,
ROSENBERG & FOX
Attorneys for Plaintiff
ANTONIOS LATSIS
225 Broadway, Suite 1115
New York, NY 10007
*Attn*: Lewis Rosenberg, Esq.

CHANDRIS, INC., by its attorneys, Poles, Tublin, Patestides & Stratakis, as and for its answer to the complaint herein, alleges upon information and belief as follows:

1.) Denies the allegations contained in paragraph FIRST of the Complaint herein.

2.) Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph SECOND of the Complaint herein.

3.) Admits the allegations contained in paragraph THIRD of the Complaint herein.

4.) Denies the allegations contained in paragraph FOURTH of the Complaint herein.

5.) Admits the allegations contained in paragraph FIFTH of the Complaint herein.

6.) Admits that Chandris, Inc. previously maintained an office and place of business in New York at 900 Third Avenue, New York, New York, and that said office was recently moved to 950 Third Avenue, New York, New York and, except as so admitted, denies the allegations contained in paragraph SIXTH of the Complaint herein.

7.) Denies the allegations contained in paragraph SEVENTH of the Complaint herein.

8.) Admits that in January of 1989 defendant, hired the plaintiff, Antonios Latsis, to provide maritime engineering consulting services from their offices, and that in the course of such employment he did attend aboard the vessel S/S GALILEO in or about May, 1989 and, except as so admitted, denies the allegations contained in paragraph EIGHTH of the Complaint herein.

9.) Admits that on or about May 12, 1989 the plaintiff boarded the vessel S/S GALILEO in his capacity as an employee of Chandris, Inc. for a voyage from Baltimore, Maryland to the isle of Bermuda and, except as so admitted, denies the allegations contained in paragraph NINTH of the Complaint herein.

10.) Admits that in May, 1989 the vessel's manager was employing a physician to provide medical services to those aboard the aforesaid vessel who wished to make use of his services and, except as so admitted, denies the allegations contained in paragraph TENTH of the Complaint herein.



11.) Admits the allegations contained in paragraph ELEVENTH of the Complaint herein.

12.) Denies knowledge or information sufficient for form a belief as to the truth of the allegations contained in paragraph TWELFTH of the Complaint herein.

13.) Denies the allegations contained in paragraph THIRTEENTH of the Complaint herein.

14.) Denies the allegations contained in paragraph FOURTEENTH of the Complaint herein.

15.) Denies the allegations contained in paragraph FIFTEENTH of the Complaint herein.

16.) Denies the allegations contained in paragraph SIXTEENTH of the Complaint herein.

AS AND FOR A FIRST
AFFIRMATIVE DEFENSE

17.) Plaintiff's injuries, if any, were solely caused and/or aggravated by his own negligence, and, therefore, the defendant is not liable.

AS AND FOR A SECOND
AFFIRMATIVE DEFENSE

23.) Plaintiff failed to mitigate his damages and, therefore, defendant is not liable.

AS AND FOR A THIRD
AFFIRMATIVE DEFENSE

24.) Defendant exercised reasonable care in hiring the physician aboard the S/S GALILEO who treated the plaintiff and, therefore, defendant is not liable.

WHEREFORE, the defendant prays that plaintiff's Complaint be dismissed in all respects and that this Court grant them the costs and disbursements of the action as well as such other and further relief as it may deem necessary and proper.

Dated: New York, New York
November 26, 1991

POLES, TUBLIN, PATESTIDES
& STRATAKIS
Attorneys for Defendant

By: /s/ _____
William J. Brady, III (5965)
A Member of the Firm
46 Trinity Place
New York, New York 10006
(212) 943-0110

(Certificate of service omitted in printing)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____X

ANTONIOS LATSIS,

Plaintiff,

-against-

CHANDRIS, INC., CHANDRIS, S.A. and TRANS OCEANIC SHIPPING CO., LTD.,

DefendantS.

_____X

91 CIV. 6900
(LMM)

AMENDED
ANSWER

TO: SHAPIRO, SHIFF, BEILLY,
ROSENBERG & FOX
Attorneys for Plaintiff
ANTONIOS LATSIS
225 Broadway, Suite 1115
New York, NY 10007
*Attn*: Lewis Rosenberg, Esq.

CHANDRIS, INC., CHANDRIS, S.A. and FOURTH TRANSOCEANIC SHIPPING CO., LTD. (incorrectly sued herein as "TRANSOCEANIC SHIPPING CO., LTD.") by their attorneys, Poles, Tublin, Patestides & Stratakis, as and for their answer to the amended complaint herein, allege upon information and belief as follows:

1.) Deny the allegations contained in paragraph FIRST of the Amended Complaint herein.

2.) Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph SECOND of the Amended Complaint.

3.) Admit the allegations contained in paragraph THIRD of the Amended Complaint.

4.) Admit the allegations contained in paragraph FOURTH of the Amended Complaint.

5.) Admit the allegations contained in paragraph FIFTH of the Amended Complaint.

6.) Admit the allegations contained in paragraph SIXTH of the Amended Complaint.

7.) Admit that, at all material times, CHANDRIS, S.A. transacted business in the State of New York through its agent CHANDRIS, INC., and, except as so admitted, deny the allegations contained in paragraph SEVENTH of the Amended Complaint.

8.) Admit that, at all material times, FOURTH TRANSOCEANIC SHIPPING CO., LTD., transacted business in the State of New York through CHANDRIS, INC., and, except as so admitted, deny the allegations contained in paragraph EIGHTH of the Amended Complaint.

9.) Admit that CHANDRIS, INC. previously maintained an office and place of business in New York at 900 Third Avenue, New York, New York and that said office was recently moved to 950 Third Avenue, New York, New York, and, except as so admitted, deny the allegations contained in paragraph NINTH of the Amended Complaint.

10.) Deny the allegations contained in paragraph TENTH of the Amended Complaint.

11.) Deny the allegations contained in paragraph ELEVENTH of the Amended Complaint.



12.) Admit that defendant FOURTH TRANSOCEANIC SHIPPING CO., LTD., was, at all material times, the owner of the cruise ship S/S GALILEO and used it in the transportation of passengers for hire by water in interstate and foreign commerce.

13.) Admit that in January of 1989, the plaintiff ANTONIOS LATSIS, entered the employment of the defendant CHANDRIS, INC., acting as a principal, to provide maritime engineering consulting services from their offices, and that in the course of such employment he did attend aboard the vessel S/S GALILEO in or about May, 1989 and, except as so admitted, deny the allegations contained in paragraph THIRTEENTH of the Amended Complaint.

14.) Admit that in May, 1989 the plaintiff boarded the vessel S/S GALILEO in his capacity as an employee of CHANDRIS, INC. for a voyage from Baltimore, Maryland to the isle of Bermuda and, except as so admitted, deny the allegations contained in paragraph FOURTEENTH of the Amended Complaint.

15.) Admit that in May, 1989, the defendant CHANDRIS, S.A., in its capacity as the vessel's manager, was employing a physician to provide medical services to those aboard the S/S GALILEO and, except as so admitted, deny the allegations contained in paragraph FIFTEENTH of the Amended Complaint.

16.) Admit the allegations contained in paragraph SIXTEENTH of the Amended Complaint.

17.) Admit the allegations contained in paragraph SEVENTEENTH of the Amended Complaint.

18.) Deny the allegations contained in paragraph EIGHTEENTH of the Amended Complaint.

19.) Deny the allegations contained in paragraph NINETEENTH of the Amended Complaint.

20.) Deny the allegations contained in paragraph TWENTIETH of the Amended Complaint.

21.) Deny the allegations contained in paragraph TWENTY-FIRST of the Amended Complaint.

AS AND FOR A FIRST
AFFIRMATIVE DEFENSE

22.) Plaintiff's injuries, if any, were solely caused and/or aggravated by his own negligence, and, therefore, the defendants are not liable.

AS AND FOR A SECOND
AFFIRMATIVE DEFENSE

23.) Plaintiff failed to mitigate his damages and, therefore, defendants are not liable.

AS AND FOR A THIRD
AFFIRMATIVE DEFENSE

24.) Defendants exercised reasonable care in hiring the physician serving aboard the S/S GALILEO who treated the plaintiff and, therefore, defendants are not liable.

WHEREFORE, defendants pray that plaintiff's Amended Complaint be dismissed in all respects and that this Court grant them the costs and disbursements of the



action as well as such other and further relief as it may deem necessary and proper.

Dated: New York, New York
April 7, 1992

POLES, TUBLIN, PATESTIDES
& STRATAKIS
Attorneys for Defendants

By: /s/ _____
William J. Brady, III
(5965)
A Member of the Firm
46 Trinity Place
New York, New York 10006
(212) 943-0110

(Certificate of service omitted in printing)

*[1]
UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF
NEW YORK

----------x

ANTONIO LATSIS,

Plaintiff,

v.

91 Civ. 6900 (LAP)

CHANDRIS, INC., CHANDRIS, S.A. and TRANS OCEANIC SHIPPING CO., LTD.,

Defendants.

----------x

June 8, 1993
10:00 a.m.

Before:

HON. LORETTA A. PRESKA,

District Judge

APPEARANCES

SHAPIRO, SHIFF, BEILLY, ROSENBERG & FOX
Attorneys for plaintiff
BY: LEWIS ROSENBERG

POLES, TUBLIN, PASTESTIDES & STRATAKIS
Attorney for defendants
BY: WILLIAM J. BRADY, III

---

* Any typographical and/or incorrect punctuation found in the following Transcript of Proceedings were left intentionally to show accurately how the original documents appeared.



**TRANSCRIPT OF PROCEEDINGS**
**TESTIMONY OF ANTONIOS LATSIS**

[2] (A jury of eight was impaneled and sworn)

THE COURT: Members of the jury, as I have told you previously, it is your function in this case to decide the issues of fact. Your decision on the issues of fact is to be based solely on the evidence. Nothing I say is evidence; nothing eigher of the lawyers says is evidence.

Questions by themselves are not evidence. Objections are not evidence. Testimony which has been excluded or which you are told to disregard is not evidence. The evidence consists of the sworn testimony of witnesses and of the exhibits which will be received into evidence for your consideration.

Also, in some instances there might be facts which the lawyers agree to or facts which I instruct you that you must find.

Now, there are two kinds of evidence: Direct and circumstantial. Direct evidence is direct proof of a fact, such as the testimony of an eyewitness. Circumstantial evidence is proof of facts from which you may infer – or conclude – that other facts exist. I will give you further instructions on these, as well as other matters, at the end of the case, but please keep in mind that you may consider both kinds of evidence, both direct and circumstantial.

Now, how do you decide what to believe and what not to believe? Listen to the witnesses, watch them and [3] observe them, then decide whether you believe or disbelieve them in the same way that you decide such

questions in your ordinary life. Did they know what they were talking about? Were they candid, honest, open and truthful? Did they have a reason to falsify, to exaggerate, or to distort their testimony? Use your common sense and your good judgment to evaluate their testimony, based on all the circumstances.

Now, in this case, you may hear testimony by certain doctors testifying as expert witnesses. Witnesses who, by education and experience, have become expert in a science, profession or area of knowledge may express an opinion as to a relevant matter in which they profess to be expert, and they may explain their reasons for that opinion.

Now, it may seem strange to you that, as laymen, jurors are called upon to resolve a conflict among experts, but since their testimony relates to factual issues, as the sole judges of the facts, you will be called upon to resolve such conflicts. The testimony of an expert is subject to the same considerations concerning reliability, credibility and interest as the testimony of any other witness.

You should give each expert opinion such weight as you feel it deserves. Consider each expert witness' appearance and his manner of testifying. Does his opinion appear to be reasonable? Does his professional judgment impress you as sound and informed?

[4] If you decide that the opinion of an expert witness is not based upon sufficient education and experience, or that the reasons given in support of the opinion are unsound, or that the opinion is outweighed by other evidence, or that the witness is biased or untruthful, you may reject the opinion in whole or in part.



It is very important that you keep an open mind throughout this case. Do not form any judgments until the evidence is concluded and the case is submitted to you.

Now, remember that the evidence comes in step by step. First, a witness testifies on direct examination. When he or she is finished, the other side has the right to cross-examine that witness. Also, first one side presents its evidence, and then the other side has an opportunity to present evidence.

Remember that there may be two or even more sides to any story. You will not be in a position to form any judgment as to what you believe until you have heard all the evidence in the case.

I will also ask you to be sure that none of your friends or relatives are present in the courtroom without my knowledge. It's particularly important that you do not hear from them what happens during those times when the jury is not in the courtroom, and also that you do not discuss with them what happened when you were present.

[5] If at any time you see a friend or relative of yours come into the courtroom, would you be sure to send a note to me through Ms. Siwick at the first opportunity, letting me know that that's the case. The reason for this is, under our system, we have certain rules of evidence, as you know, and the lawyers may discuss certain things, whether they are to be put before you properly as the finders of fact.

If, for example, you are in the jury room and one of your spouses comes in, and we are discussing something which ultimately is not put before you for your consideration, later in the day, your spouse says to you, "What'd you think about the part where the lawyers were talking about X?" if that happens, then we might have to retry the whole case. So please be particularly careful to let me know if you see any folks you know in the courtroom.

Do not discuss the case among yourselves or with any other person. You will discuss it among yourselves only after all of the evidence is in and the case is given to you to discuss and decide in the jury room. Until then, please keep your impressions to yourself.

I do not think it is likely in this case, but please do not read anything in the newspaper or elsewhere about the case or listen to anything you hear or see on T.V. or on radio. Do not allow anyone to speak to you about the [6] case. Do not do any research or investigation on your own into the case.

Now, if you wish, you may take notes. There are pads and pencils in the jury room. If you do so, however, please leave the notes in the jury room at night, and remember that the notes are for your own personal use. They are not to be given or read to anyone else.

Now, you might come in contact with the lawyers in the hall. If they don't say hello to you, they are only doing their jobs. Our goal here is to try the case completely, fairly, without any influence one way or the other. For that reason, the lawyers will not greet you, nor should you greet them when you are in the hall. And it is



not rudeness, because they are doing so at my instruction.

Finally, a word about trial procedure. In a very short time, the lawyers will have an opportunity to make opening statements to you. As I said, these statements are not evidence. They serve no purpose other than to give you an idea in advance what evidence the lawyers expect that you will hear from the witnesses who are called. These statements permit the lawyers to tell you a little bit about what the case is about, but the only evidence will come from the witnesses and the exhibits.

After the opening statements, you will hear the testimony of the witnesses. Each witness will give direct [7] testimony, and then he or she will be cross-examined by the other side. Sometimes there's redirect and recross, as well. First, the plaintiff will present its evidence, and then the defendant will present its evidence.

After all the evidence has been received, the lawyers will have an opportunity to sum up. They may review the evidence, they may make arguments to you as to what conclusions they think you should draw or you should not draw from the evidence. Remember, again, that those summations are not evidence but only argument.

After the summations, I will instruct you on the law, and following my instructions, you will go into the jury room, review the evidence, review the exhibits which have been received in evidence and discuss the evidence among yourselves. Based on that evidence and your discussion of it, you will determine your verdict.

At the conclusion of the trial, I will tell you in detail what the plaintiff must prove in order for him to recover. For the moment, I will just say that a party with the burden of proof must prove his claim by a preponderance of the evidence. This burden of proof by a preponderance of the evidence is different from the burden imposed on the state in a criminal case where, as those of you who have served and those of you who watch television know, the government's allegations in a criminal case must be proved [8] beyond a reasonable doubt.

I will tell you more when I instruct you at the conclusion of the case concerning this burden, but at the moment I will only say that this burden means that if, after hearing all of the evidence, you believe that it is more likely than not that a certain fact occurred, then that fact has been proved to you by a preponderance of the evidence. If you believe that it is more likely than not that it did not occur, then it has not been proved to you. But, if you find that the likelihood is evenly balanced, maybe yes, maybe no, then the party having the burden of proving the fact to you has not succeeded.

Now, after a short recess in which you will go into the jury room, we will have the treat of hearing the opening statements of the lawyers.

Thank you, ladies and gentlemen. Ms. Siwick will take you into the jury room and point out the facilities to you.

(Jury leaves courtroom)

THE COURT: May I ask a question before you go out? There is not an instruction that we can find with



respect to lost wages. Is that something in the case, or not?

MR. ROSENBERG: Yes, your Honor.

THE COURT: It's in the case?

[9] MR. ROSENBERG: Yes. Well, lost income, lost income. It's not wages.

MR. BRADY: Not wages.

MR. ROSENBERG: Not wages.

THE COURT: Lost income.

MR. ROSENBERG: Income, yes. I'll prepare something –

THE COURT: Okay.

MR. ROSENBERG: – appropriate to that.

THE COURT: Why don't you look at it just so we know what we are doing.

MR. ROSENBERG: We are going to have to do something about that, your Honor, because that's quite specialized in this matter, and I think that we have our work cut out for us on that.

THE COURT: Okay.

At the outset, there is not a stipulation as to employment status?

MR. BRADY: No.

MR. ROSENBERG: Well, depends.

MR. BRADY: Depends on what you mean. He was employed.

MR. ROSENBERG: Was employed by the defendants. The order states so. But, however, his status as a seaman is at issue.

[10] MR. BRADY: That's the issue.

MR. ROSENBERG: Jones Act issue.

THE COURT: We go so far as to say that he was employed by defendants?

MR. ROSENBERG: Yes.

THE COURT: And then we have looked carefully at your jury charges on the seaman issue, and I know that I've forgotten the Fifth Circuit case, but I know that the Fifth Circuit case which you cite states something along the lines of permanently employed or substantial amount of his time.

MR. BRADY: Right.

THE COURT: And plaintiff's, I think, was much more simple.

MR. ROSENBERG: Well, we cited McDermott, but there is something I would like to bring to the Court's attention.

THE COURT: McDermott was the second part.

MR. ROSENBERG: Right, on the issue of substantial –

THE COURT: Right.

MR. ROSENBERG: – contacts kind of thing. I have a recent case from this circuit, an Eastern District, which I think –



THE COURT: Okay, let us see it. Give it to counsel.

* * *

[27] Thank you.

THE COURT: Thank you, sir.

Plaintiff will now begin putting in his case, ladies and gentlemen.

Mr. Rosenberg.

MR. ROSENBERG: Your Honor, I call the plaintiff Antonios Latsis.

ANTONIOS LATSIS,

called as a witness by the plaintiff, having been duly sworn, testified as follows:

MR. ROSENBERG: May I proceed, your Honor?

THE COURT: Yes, sir. Please do, Mr. Rosenberg.

DIRECT EXAMINATION

BY MR. ROSENBERG:

Q. Mr. Latsis, you are the plaintiff in this action; is that correct?

A. Yes, I am.

Q. I'm going to ask you, what is your state of birth and your country of origin?

A. I was born in Athens, Greece, September 25, 1940.

Q. And can you tell us, briefly, Mr. Latsis, what was your education as a young person?

A. I finished high school and proceeded to join the Merchant Marine as a cadet in 1959 in Bremerhaven, Germany. I stayed in the Merchant Marine through my cadetship in [28] various elevated qualifications the first four years before I took the schooling and examinations by the Greek Ministry of Merchant Marine Education Department as a second mate.

Once I completed this examination successfully, I sailed as a second mate for 16 months on another company ship, again Greek Merchant Marine.

Q. What year are we talking about now, Mr. Latsis?

A. Examinations took place in 1964. I joined another ship in 1964 in September – in December, and for the next 16 months I sailed as a second mate to about end of 1966, September about.

Q. Can you just tell us briefly what the duties of a second mate were at that time?

A. A second mate on a Merchant Marine ship is in charge of navigation different towards the beginning of his experience, 8:00 to 12:00 in the morning and 8:00 to 12:00 at night, and also later, when he gets more experience 12:00 to 4:00, which are more responsible, because late at night and in port, the different functions of the ship like filling the freighter, it's a loading and discharging function.

If the vessel is a passenger ship, in the case we got a layover, passenger ship that I was with, attending the safety and discharging of the passengers, taking supplies,



checking all the equipment of the ship for navigation and so [29] on and so forth.

Q. You indicated you had taken courses as well as aboard ship; is that correct?

A. Yes.

Q. You took written examinations for the various positions until you arrived at the position of second mate?

A. Yes, sir.

Q. What was your health like in that period of time?

A. My health was in very good condition.

Q. And were you obliged to pass certain physical examinations periodically to demonstrate your fitness?

A. Yes, I was.

Q. And you had no difficulty with these examinations and you passed all of them, am I correct?

A. Certainly.

Q. Now, from the time of your – I'd like you to just chronologically move briefly, if we could, your Honor, to the period of time thereafter and confine yourself before your marriage, as best you can, okay?

Can you tell us chronologically, after your achieving second mate status, what the nature of your employment was and where it was and what you did?

A. Okay. As I said, the fist ship after my examinations, my diploma work was with a ship that went to –

traded between Greece and the Indian Ocean, countries [30] of Indonesia and Philippines, and brought pilgrams to Mecca. I did that for six months.

Then, on completion of this period, I joined a Merchant Marine ship that was worldwide, specifically in the Pacific Ocean between Japan and the West Coast of the United States and Australia; and subsequent to that, I returned to Greece, and I was offered the position of a captain in the Mediterranean vessel, for which I was qualified by virtue of the size of the ship and the area in which it was trading.

Q. And, thereupon, were you appointed the captain of a vessel?

A. I was appointed the captain of a small Mediterranean vessel.

Q. And were you the master of that vessel and overall in charge of its crew and all of the equipment –

A. Safety –

Q. – and safety?

A. – navigation, repair.

Q. And how was your health up until that period of time, Mr. Latsis?

A. It was in very good condition.

Q. And in addition to the examinations you previously had to take, you took additional examinations, am I correct?

A. Every time you join a Merchant Marine ship, you [31] have to take a physical examination.



Q. Did you have any difficulties with any function in any part of your body in passing these examinations?

A. None whatsoever.

Q. Now, how long did you remain the captain of that vessel that sailed?

A. Five months.

Q. About five months.

And what period of time were you up to now on the calendar? What date are we talking about?

A. We are up to February 1967.

Q. And in February of 1967, what was the next activity you embarked upon?

A. My next assignment was a larger ship, on which I obtained the assignment of the chief mate, again one step above my diploma. The ship was larger and I had to acquire experience in that position so I would be assigned to that when I obtained my diploma, at which time I had met my future wife, and I –

Q. Where was she living at that time?

A. She was living in Greece at the time.

Q. Was she a student in Greece at that time?

A. She was student of the Greek language and she was also teaching English.

Q. And after you met Carol, were you married in [32] Greece?

A. We were married in Greece subsequent to my second assignment on the ship as chief mate, yes.

Q. And when were you married?

A. I was married in August of 1967.

Q. And did you continue sailing after you were first married?

A. No, I did not.

Q. And what did you do at that point after your marriage in August of 1967?

A. After I was married, I completed the education, the schooling, so to speak, of the education for chief mate's license. I took an examination and passed it very successfully, and after that, we had already made the arrangements for me to immigrate to the United States, where I obtained citizenship by virtue of being married to a United States citizen, and I proceeded to do that in December of the same year.

Q. The schooling that you had for that chief mate's position, where did that take place?

A. That took place in Piraievs, Greece.

Q. And what was your health at that point in your life?

A. Again, I took another physical examinations before the award of the diploma as a part of the [33] prerequisite of passing the complete examination, education and physical, and I passed it.

Q. And you indicated to us that you immigrated to the United States in about that time in 1967, am I correct?

A. In December of 1967.



Q. And where did you and the new Mrs. Latsis move to in the United States?

A. We moved to San Francisco, California.

Q. And why did you select San Francisco?

A. Because my wife was originally from this area. She was born and raised in that area.

Q. And after arriving in the United States, how did you get to the United States?

A. I sailed, ultimately. I took a sailing assignment with a passenger ship of a company I worked for previously, and I didn't pay ticket and they didn't pay me salary, so I was able to move a large number of my belongings since I was coming as an immigrant.

Q. And after arriving in San Francisco, did you embark upon employment in the United States?

A. I certainly did. I was employed originally by Pillsbury, Martignolli & Bossermann, a surveyors firm, to do ship surveys.

Q. Let me interrupt you briefly. What is a ship survey and what does a ship surveyor do?

[34] A. A ship surveyor is called usually by claimants, either the cargo – in my case, it was cargo mostly because I was associated with a cargo – or damage to the ship or damage to the engines of the ship on some occasions that occurred during the voyage, and they want to ascertain the extent and the cause of the damage and, to some extent, make a statement, a responsible statement. And so the parties involved afterwards, they will verify that this actually occurred.

Q. And what qualified you as a marine surveyor?

A. My previous sea experience in which I was safeguarding, say in this case, the cargo from being damaged, and my years of sailing give me the experience to evaluate situations aboard the ship on which the cargo would be damaged or the ship would be damaged.

Q. And did you have the opportunity to resume your formal education after arriving in San Francisco?

A. Yes, this was –

Q. And can you tell us where that was and what the program was and when it was?

A. Yes. I originally got a job so I can, you know, support my family and myself, and also I applied for the university for the next fall since I was ahead of the spring semester and I couldn't very well get into the program.

And all the programs started the beginning of [35] school yeer, the academic year, so I applied for the September session to attend the University of California in the daytime. As a full term student, three-quarter student, they allow you to take a lighter load, maybe three courses instead of four.

Q. Was that because you were employed at the same time?

A. Because I had to support myself, yes.

Q. After your admission to that program at the University of California, which branch was that?



A. It was a branch of mechanical engineering, with the ultimate intentior. of backing a naval architect, of which a prerequisite is mechanical engineering.

Q. Was that at Berkeley?

A. University of California in Berkeley, yes.

Q. And for how long were you a three-quarter student in the fashion you described to us?

A. From 1968, fall, to the summer of 1974.

Q. Had you been awarded a diploma before that time by the university?

A. Yes. In 1973 I completed a Bachelor's of Science Degree program in mechanical engineering, and I was awarded that diploma.

Q. So it was from 19 –

A. '73.

[36] Q. 1968 to 1974 you were on this three-quarter program, essentially?

A. Yes.

Q. And you worked throughout the period, am I correct?

A. Yes, I did.

Q. And you worked in the maritime industry?

A. I worked in the maritime industry for the Pacific Maritime Association as a ship's clerk, organizing the loading of ships, preplanning and supervising the loading of vessels, mostly American vessels, in the port of San Francisco and Oakland.

Q. You indicated your objective was for a degree in naval architecture. You were awarded that in 1974, am I correct?

A. In 1974. A year later, I was admitted to the graduate school of the same university, and I completed a program of naval architecture for a naval architecture degree in a little over a year with a master's thesis included.

Q. So when was it you were awarded the Master's Degree?

A. I was awarded the Master's Degree officially for December of that year, but I completed the requirements by September of 1974.

[37] Q. Can you tell us what your health was throughout this period of your life?

A. Throughout this period, my health was good, with the exception that I started – I needed to wear glasses first, I observed, for driving. I couldn't see the signs far enough ahead. And also, attending the university, it was more strenuous work on my eyes and the distance to the board, so I observed that I needed glasses.

Q. When did you begin wearing glasses to the best of your recollection?

A. In, I would say, 1970, '69 and '70, I started wearing glasses.

Q. And from thereafter, you were wearing glasses to the present time, am I correct?

A. Yes, I have.



Q. And up until your graduation and your Master's Degree, did you have any special difficulties of your eyes other than requiring periodic eye examinations and prescriptions?

A. No. The doctor told me several times that the rest of the indications of my eye were normal.

Q. When did you come to New York and what occasioned that move to New York?

A. Upon graduation, I had been interviewed by the American Bureau of Shipping.

[38] Q. What is the American Bureau of Shipping?

A. It's a classification society, a non-profit organization that supervised, makes the rules, supervised and supervises the execution of building, classing and maintaining Merchant Marine vessels.

Q. And where was the office that employed you at that time?

A. On 20 Broad Street, downtown New York.

Q. And –

A. Manhattan.

Q. When did you move to New York?

A. I moved to New York September of 1974.

Q. And from September 1974 to the present time, have you maintained your residence in New York State?

A. I certainly have, yes.

Q. You and your wife presently reside in Rye, New York, am I correct?

A. We do.

Q. How long have you lived in Rye, New York?

A. Since 1984.

Q. And where did you live before that?

A. In Staten Island, New York.

Q. And how long a period of time did you retain this employment with the American Bureau of Ships?

A. For –

[39] Q. Shipping. Excuse me.

A. For three years and three months, approximately.

Q. Was there any travel involved in that job?

A. It was some travel, infrequent, however, to survey ships and go to shipyards, take measurements of ships while we are doing a project that concerned a vessel that was being built. I was a research engineer for that firm.

Q. I see. And you said you retained that job for three years and three months?

A. Right.

Q. And can you tell us what date we are up to now?

A. In 198 – I mean 1977, December.

Q. Did you continue with your education in any fashion during the interval following your graduation and awarding of your Master's Degree?



A. I did. I took graduate courses from the State University of New York in advanced chartering problems and marine insurance.

Q. And when you left the American Bureau of Shipping, what was your next employment?

A. My next employment was I was engaged by Southern Star Shipping Company.

Q. What's the name again?

A. Southern.

Q. Southern Star?

[40] A. Southern Star Shipping Company, Incorporated.

Q. What was the position for which you were hired by Southern Star?

A. I was hired as a superintendent engineer.

Q. And where was that work?

A. That work was based in New York at 245 Park Avenue. I was also traveling to the locations where the vessels were either carrying out operations or being repaired or being in need of my services.

Q. And were you concerned generally with the operation of those vessels?

A. The technical department is normally in support of the operations. They overlook the operations from the point of view of being carried out properly from the mechanical point of view and the functional point of view, and whenever there's a need for repair to improve

or ascertain the performance, they interfere there and carry out the repairs, plan them, negotiate them, carry them out and finish them.

Q. Did you ever have from time to time occasion to go aboard ship in the course of that employment?

A. Several times. That's what we are doing, we are going on board the ship, supervising the repairs, first of all acknowledging the problem, planning, supervising the execution of the repair, and also saying to the [41] certification society, for instance, in this case, A.B.S., that the ship was in good repair in the periodical surveyor status.

Q. And is it required that maritime vessels be periodically inspected and certified concerning their seaworthiness?

A. Absolutely, sir, yes.

Q. Did you have a role to play with respect to that company's ships in that regard?

A. I did.

Q. And did you have occasion to observe their performance and sail with them in order to do so?

A. I did so at all times. Very frequently, I would say. In fact, one of my first assignments with the company was to see an overheating problem in the main engine of one of the vessels. And I went out to sea with the ship, and I was a specialist in that particular engine to see where the problem was coming from.

Q. And was this during the course of a regular voyage of the ship, scheduled voyage?



A. Yes.

Q. Was that a passenger ship?

A. That was a freighter.

Q. Freighter?

A. It sailed from New Orleans to Houston. It was a [42] short voyage, so it was convenient and economical for this specialist that we retained.

Q. For how long a period of time were you employed by Southern Star?

A. I was employed from 19 – I started January, took two weeks vacation, started in January of 1978, and I stayed employed by them until the end of February of 1988. 11 years, about.

Q. Excuse me?

A. 11 years, about.

Q. And in that period of time, how was your health?

A. My health was, except for the corrective lenses that I had to wear, it was in excellent condition.

Q. When did you become the patient of Dr. Thomas Materna?

A. I believe it was in 1982 or '83. I'm not – I haven't reviewed the record. I think it was '83.

Q. And can you tell us with what frequency you would see Dr. Materna from the time you became his patient in '82 or '83, whenever it was, until the period

under consideration of February or March of 1989, how often would you see him?

A. The frequency was every year he would send me a card and remind me, unless I was feeling that I needed correction in my sight more frequently, which it did not [43] happen.

Q. And as a result of these visits to Dr. Materna during that interval in time of about six years or seven years or thereabouts, did he continue to prescribe different types of lenses for you on occasion?

A. Yes, he gave me a thorough, you know, eye examination, he anesthesized my eye, he looked for a variety of things that I'm not qualified, actually, to know, but he just keep noticing that things were normal, and then he will examine me for vision on the chart, and when I needed corrections, he would give me the correction to the lenses I was wearing at the time.

Q. Did he diagnose any condition with respect to your eye other than the need for lenses and in being nearsighted?

A. No, sir.

Q. Into this period of time did you have any special knowledge about the eye, how it functioned, or what difficulties they might be prone to or conditions?

A. Not with regard to injuries or other malfunctions except the shortsightedness.

Q. You know what that was from your own experience, I take it?



A. Yes.

Glaucoma. I might add Glaucoma I knew because he [44] was taking Glaucoma measurements. But I still don't know how it manifests itself.

Q. During the course of the normal examination, he would test your eyes for Glaucoma?

A. Glaucoma.

Q. Did he indicate you had no Glaucoma, that your eyes were normal in that respect?

A. Yes.

Q. Had you ever experienced any difficulties with your vision other than what you have described to us?

A. No, sir.

Q. Now, we've taken you up to about the period of February or March of 1988 in your career, and can you tell us at that point in time what your next employment was?

A. At that time, the company that I was working for, it was experiencing, Southern Star Shipping, specifically, was experiencing financial difficulties, as was the entire shipping industry, and they could not, you know, they could not keep the engineering department in New York as being very expensive work space, and they asked me to either move to Greece where they have another office or that – and later they could not keep me any longer under the same circumstances.

So I proceeded to receive a small severance pay, and they gave me a lot of recommendation letters and all of

[45] this and I became available for employment. And Mr. Kaparis, Chandris, Incorporated, interviewed me to offer me employment in their firm.

Q. What was the nature of that employment that was offered?

A. The nature of that employment was to assist Mr. Kaparis because the company was embarking into a substantial improvement program of their other fleet, and also they were anticipating ordering a new ship at the time, which they eventually did. And since I had new building experience with Southern Star, building ships in Japan, they knew of me very well and they offered me this employment to add to their personnel, to their technical personnel.

Q. When you were first employed by Chandris, did they have a fleet? Did the Chandris companies have a fleet of merchant vessels?

A. They have a fleet of merchant vessels, five of which were operating in the U.S. ports, from the U.S. ports to the Caribbean, New York to Bermuda, and Miami and the intermediate ports to the Caribbean Islands, and also from Puerto Rico to the Caribbean Islands.

Q. And did the work that was contemplated in this employment require you to attend the vessels themselves, be on board during voyages and trips?

A. Yes. The job description was, at least as I [46] understood it when I joined them, that it would be taking all of the reports aboard the ships from the engineers, because they were visiting ports very frequently, as passenger ships do, and go and observe the problems that



they were experiencing or anticipating the problems, if measurements were low or, you know, very close preventative maintenance as well.

And then we will come ashore, plan the – make a plan of attack, so to speak, what are the people that would help the slip, what materials were needed, and will either join the ships ourselves with the specialist or make sure that at the next port the specialist went on board, it was smoothly started, and let the ship sail on its own until the next port, which was most of the times five or seven days. This is a maximum length this ship went out by itself.

Q. And when you first embarked on employment with the Chandris companies, what was the financial arrangement?

A. The financial arrangement at the beginning was to go to them on consulting basis from September of 1989 – '88, sorry, 1988, for three months.

Q. Was this sort of a testing period for both you and for them?

A. It was, yes. I objected to moving from New York to Miami, to relocating my family without knowing the nature of the work and the – not the nature of the work so much [47] per se, the nature of the whole overall future of my assignment with Chandris, and Chandris wanted to see how I would fit into their other personnel that they had in position at the time.

Q. So did you embark upon this employment, on this experimental, if I can call it experimental, or tentative basis?

A. Yes, trial basis, trial basis, and we call it consulting for purposes of financial arrangements.

Q. In other words, you were not a salaried employee during that period of time?

A. I was not a salaried employee. I was not insured medically, and I did not have the benefits of the company offered, such as retirement fund.

Q. So you were not a permanent employee of the company?

A. I was not.

Q. And that was clearly understood by both you and the Chandris people when you first embarked on this work, am I correct?

A. Yes.

Q. And during that, you worked those three months, I take it, correct?

A. I worked those three months.

Q. And you carried out your assignments, am I [48] correct?

A. Correct.

Q. And can you describe to the jury what the nature of those assignments were during that period of time?

A. Okay.

Q. Generally, of course.

A. Generally was to visit all the ships that they were sailing in the vicinity of the United States, that is,



Puerto Rico and Mainland United States, and become familiar with their machinery, with all the equipment on board, all their functions, the sequence of events, how you have blank time to carry out repairs or not, and also I attended a dry docking in the Port of Norfold of the Amerikanis, one of the vessels.

Q. Amerikanis is one of the vessels?

A. One of the vessels trading the U.S. water. And subsequent to that, I took a cruise – "cruise" is a misnomer – actually, working cruise, with a specialist from Germany that they were planning the Galileo, they were taking the specifications of the machinery to plan the Galileo conversion. It went from Miami to Mexico and returned.

Q. The Galileo is one of that fleet as well, am I correct?

A. It is.

[49] Q. And can you just briefly describe the Galileo and she existed in that period of time and what was contemplated with respect to modifications, if any.

A. Yes. The Galileo at the time was a 27-year-old Italian-built liner that she had reached – she was originally built for immigrants from Italy to Australia, and she was reaching a certain age that all her equipment, cabins and plumbing, main engines were coming of an age, that they were no longer practical to be maintained in that fashion because the passengers demanded better ships, better services.

So they were planning a major refurbishment from the accomodation, from the hotel, as it is called in the

industry, which is cabins, saloons, public spaces, dining room, to the major engines, the major engineering functions, such as increase the conditioning, sewage system, bow thrusters, propellers, general overhaul and extensions.

So that was a very major modification, a very expensive one, and the Chandris decided to preplan it ahead of time at least one year, and that's where I came into the picture.

Q. And did you study this vessel by traveling on board, as well as at the office looking at drawings and specifications?

A. That is correct, sir. I took the drawings, I [50] visited the vessel in every opportunity she came to port. I spent as much time as I could on board in port. And when we engaged the different companies to come and give us quotations, I traveled with them on board the ships. I helped them write the specifications.

I was liaison between the engineering staff that wasn't very familiar with conversions, but they were more familiar than me with the actual running of the engines, and the people that were proposing to do the modifications.

Q. Were you called upon from time to time to give advice concerning required repairs in the interval before the conversion as the ship traveled?

A. Absolutely, all the time. I was called in to, when they were experiencing minor problems – for instance, sometimes they have three boilers is one instance, and there were two operating at all times. When one of them



was experiencing difficulty, how the prepare the next one, what type of repairs they could do temporarily until we went to the conversion and made the repairs, and things of the nature.

Air conditioning units were acting up. Again, they were getting old. Electrical problems were appearing from time to time. There were overloads. We converted to 220, that was usually in Europe, to 110 that the American passengers required for their services, and all the [51] machinery that they were using from the U.S. manufacturers and things of this nature.

The electronic equipment was being upgraded because radars and anti-collision devices were required with the new regulations, safety of life at sea requirements. It was a continuous operating and keeping up the ship to date and planning the major modifications that would be more thoroughly converted.

Q. And what was the typical itinerary of the Galileo in that period of time?

A. The Galileo, she was sailing from Miami to Mexico to the West Coast of Mexico – to the East Coast of Mexico, I'm sorry, and in the five-day cruises and two-day cruises to the Nassau, Bahamas on the weekend, Friday to Sunday in the wintertime.

And in the summertime, in the early spring, she will start repositioning herself with seven-day cruises. For instance, Charleston, one cruise, as she was going up to the Caribbean, and then up to Baltimore, Philadelphia, and eventually, in the full season, at the end of May she

was in New York, having itinerary of New York to Bermuda and back, five-day and two days to sometimes to nowhere, or seven days to Bermuda.

Q. Where were you living with respect to that employment in the three-month trial period?

[52] A. My basic residence was in Rye, New York. However, I was spending enough time in the Miami office because that's where all the files, all the drawings of the ships were, and that's where the technical offices headquarters were, and I had – Chandris, when I was consultant, they maintained the hotel room for me, suite, actually. It is a little bit more like an apartment.

And eventually, when I was permanently employed by them in January, they we made an arrangement to have a trial period for my residence in Miami, and they paid part of my rent in an apartment.

Q. We got to January of 1989. In January of 1989, did the arrangements which were the temporary up until that time solidify to something more permanent –

A. Yes, there was.

Q. – between you and Chandris?

And can you tell us what the financial arrangements were beginning in January? Do you know approximately when it was, mid January, beginning of January?

A. It was in the middle of January.

Q. Okay. So from say January 14 or 15 or thereabouts, your relationship with the company in terms of –



THE COURT: Mr. Rosenberg, what was the change?

[53] Q. Tell us what that was.

A. Okay. In the middle of my – to start it properly, the middle of my consulting, they all agreed that we were all suited for each other, we could work together very well, and they started proposing. And by middle of January, we had confirmed my remuneration, my benefits under which I would join the company as an assistant to Mr. Kaparis in the engineering department, which was the number two position in engineering.

Q. And was this, in terms of the financial arrangement, characterized in an annual salary?

A. It was an annual salary paid bi-weekly, 26 times a year, a leased car of 400-some, 95 dollars I think it was, part of the apartment fee that they would pay towards whatever apartment I rented for the following year, and a pension plan to which I would become vested in five years, and they would pay the major portion and I would pay up to 5 percent of my income towards it – they would match it by double – and full medical coverage, full medical insurance for myself and my family, although my family was not living in Miami at the time.

Q. And what was annualizing the salary, what was the salary fixed at?

A. We started with 65,000, plus the benefits I told you, and also all the travel expenses, entertainment [54] expenses. Several times I had to take technicians and several people out to dinner, or whatever that entailed, whatever expenses incurred. Also, travel expenses were

extra, and my living expenses during travel outside of the Miami office.

Q. And for how long a period of time were you retained as a salaried employee of Chandris?

A. From middle January of 1989 to the third week of November of 1990.

Q. And by the time 1990 had rolled around, had the annual salary been altered in any way?

A. Yes.

Q. What was the annual salary in 1990?

A. In 1990, the salary by the end of year, because they also paid an extra salary at the end of the year, 13th salary, so to speak, as a bonus overall, it was 75,600, I believe.

Q. Was there a value associated to the fringe benefits that you received for the company?

A. Yes, my benefits were the car was about 5,000, I estimated; the medical insurance about $7500; the retirement fund compensation, about $7500; and then, of course, to that, in comparison to my present situation, I estimated the value of vacation time, paid vacation time, and sick leave.

Q. How much was that?

[55] A. I would say one month's worth of benefits, which was $6,250 based on 75,000. And –

Q. Did you receive entertainment expenses?



A. Well, entertainment expenses did not count because it was just reimbursed. But there was some small attached to that.

Q. What was that value?

A. I would say about 3,000 a year.

Q. And what was the total annual compensation package would you say Chandris employment had employed you at?

A. Estimated at that time about 105 – approximately 105,000 with the benefits.

Q. In the period of time that you were employed by Chandris, from January of 1989 to November of 1990, that's approximately – that's less than two years. In weeks, how many weeks would that be about?

A. About 98 weeks.

Q. 98 weeks. I'd like to ask you, with respect to your duties and whereabouts they would take place on a weekly basis, if you were to estimate in that 90-some-odd weeks of employment, how many of those weeks would be aboard ship and how many of those weeks would be –

A. I estimated about 65 weeks out of the 98, but I'm taking out of this also the 6 weeks of compensation for my [56] eye.

Q. So you weren't working in that period of time?

A. I wasn't working in that period.

Q. You were paid, of course?

A. I was paid, of course.

Q. But in terms of your activities, employment activities, that was employment?

A. Yes. So deduct that from the actual active duty weeks that I was employed by Chandris, and that comes to about 65 weeks, which amounts to 72 percent of my time.

Q. And now let's get to the point where the voyage of May 14 –

MR. ROSENBERG: If your Honor please, can you give us some indication as to when we might be breaking for luncheon recess? I want to logically stop at some point in this.

THE COURT: Tell me, please, what your estimate is of the time for the testimony relating to the voyage at issue?

MR. ROSENBERG: Well, the voyage in issue and the subsequent care will probably be 40 minutes to an hour, I would say.

THE COURT: Okay, why don't we break now. We will take an hour, ladies and gentlemen. Would you be kind enough to come back at 1:30?

[57] Remember, please, do not discuss the case among yourselves while you are out. And would you make every attempt to be as prompt as possible so we can get as much work done each day as we can.

Thank you. Enjoy your lunch. Come back before the rain.

(Jury leaves courtroom)



THE COURT: One question, gentlemen, if I might, on what we were talking about before, on the issue of the definition of a seaman and how we discuss the employment issue.

Now, Mr. Brady, I looked at the Fifth Circuit case that you note in your instructions, and, Mr. Rosenberg, I think that the instructions that you put in were a little too brief. Mr. Rosenberg has handed me Judge Glasser's case in this Buchalotto against the City of New York.

MR. BRADY: I haven't had a chance to read that yet.

THE COURT: Why don't I give it to you.

MR. ROSENBERG: I gave him a copy.

MR. BRADY: I have a copy, but I haven't had a chance to look at it.

THE COURT: Tomorrow morning could we discuss this a little further? Because, for obvious reasons, I think it's very important and I don't think that either one [58] of the proposed charges you folks have put in is exactly on point. So maybe if we could all look at the same case and be on the same wave length, we could talk a bit before the jury comes in tomorrow morning.

MR. ROSENBERG: All right.

MR. BRADY: Thank you.

THE COURT: Thank you very much. Enjoy your lunch.

(Luncheon recess)

[59] AFTERNOON SESSION

1:30 p.m.

(In open court; jury not present)

MR. ROSENBERG: When I complete, Mr. Latsis's testimony, I intend to read the deposition transcript of Dr. Gonzalez. I had considered, subject to the Court's permission, having my associate sit in the witness chair, and I will read the question, he will read the answer to make it a little more easier flow.

THE COURT: Any problem with that Mr. Brady?

MR. BRADY: No, your Honor.

THE COURT: Sure.

Is Dr. Gonzalez going to appear?

MR. BRADY: Yes. I'm expecting him, your Honor.

MR. ROSENBERG: He's taking an examination now, apparently.

THE COURT: The question is, do you need to read it?

MR. ROSENBERG: Only use his testimony as a foundation for questions for my expert, who will be here tomorrow.

THE COURT: All right, but we won't go over the same material again. And if you have to read, you have to read, but we are not going to do it again Thursday.



MR. ROSENBERG: He's going to be calling him. [60] I'm not calling him.

THE COURT: All right.

MR. ROSENBERG: I plan on cross-examining him.

THE COURT: No doubt.
Okay, are we ready to go?

MR. ROSENBERG: Vigorously.

THE COURT: Bring them in.

(Jury enters courtroom)

THE COURT: Good afternoon.

THE COURT: Mr. Latsis, would you resume the stand, sir, please.

ANTONIOS LATSIS, Resumed

THE COURT: Mr. Rosenberg, let's go.

DIRECT EXAMINATIOI, CONTD.

BY MR. ROSENBERG:

Q. Mr. Latsis, I would like to call your attention now to the period in time immediately preceding May 14, 1989, and in connection with your employment, where were you located at that time?

A. I was still located in Miami and my family was still in New York.

Q. And in connection with your duties for Chandris, what were you doing on that particular day, that Sunday, May 14?

A. We had just returned from a two-day cruise to [61] Nowhere out of Baltimore.

Q. Excuse me for a moment. You had been on a boat for, the ship for the previous –

A. I had been on board a ship for the previous two days, and the day before we arrived from Miami to Baltimore. We joined the ship on Friday, the 12th, with shipyards and technicians from different subcontractors that we were going to participate or propose to participate in the conversion, and we were showing them the ship, the ship's machinery, layout, interfacing it with the officers, as I said before, the engineering officers and deck officers for the function of different parts that they were going to be converting, taking specifications and so on and so forth, taking specific specifications.

And then on Sunday, we arrived back in the morning in Baltimore, and during the course of the day we were discharging passengers, taking passengers for a five-day cruise to Bermuda, which would be Sunday to the following Friday.

Q. And what were your duties to be during that five-day interval?

A. During the five-day interval, we had received on board during Sunday the other, another team, a group of shipyards and technicians that would be doing the same thing, they would be exposed to the ship's machinery, [62] layout, verify different parts of the specifications that we had given them to quote. Very extensive.

Q. Was it a regularly scheduled cruise?

A. Regularly scheduled cruise with passengers.



Q. This was the Galileo?

A. This is the S/S Galileo.

Q. The S/S Galileo. Can you describe to us the morning of May 14, what you did that morning, what kind of things you embarked upon?

A. Well, we discussed with the team that was going out, the teams, the meeting, and we discussed all their questions. If they had any more questions, any more information we had to send them either by mail or drawings, whatever, in a general meeting with Mr. Kaparis and the ship's chief engineer and other representatives, and we kind of helped them out on the ship. And we had a little break in between, and after that, the people from the next team arrived and we start working on board, started showing them the corridors and what we were going to be doing in the next two days.

Q. Mr. Kaparis was with you at that time?

A. Mr. Kaparis was leading the team, yes, of the Chandris technical department.

Q. With respect to the hierarchy of the technical department that you were employed by, how did Mr. Kaparis [63] fit in?

A. He was the head of the technical department.

Q. Who did you report to?

A. I reported to him.

Q. Can you tell us whether or not at some time during the course of that day you experienced any problems with your eye, with your eyes?

A. Around noontime, to the best of my recollection, I started seeing like a tear at the bottom part of my eye, and I was rubbing it and trying to see if there was something that, you know, I could remove. And, you know, as I was moving my eye, it looked like it was moving a little bit, but it didn't. But it was clear. I could see through it. It it was in the center.

And as the day progressed, I became more annoyed because this seemed to stay there and, if anything, expand a little bit. We were in the middle of sessions with the incoming teams and so on and so forth, and in the afternoon I noticed that it was getting a little hazy, a little fuzzy and more centeralized to the eye. So I began to worry that this was nothing that could be removed easily, but again not enough to think that I would alert the whole ship and say I have to go and so on and so forth.

And by the time we sailed, I had more free time, as the ship was sailing, to concentrate on myself, and I [64] seek advice immediately by a nurse that I happened to see on the deck. And I said, well, what do you think I should do, is it something that can be seen, and she said, no, but I would advise you, of course, to see the doctor right away.

And I did just that.

Q. Who was the doctor that you went to see right away?

A. Dr. Gonzalez.

Q. Where was the ship in terms of its progress at the time you first encountered Dr. Gonzalez?

A. She had pulled out of the dock.



Q. And –

A. In the port.

Q. Excuse me.

a. The Port of Baltimore, I was going to say.

Q. And who was Dr. Gonzalez?

A. Dr. Gonzalez was the ship's physician in charge of the hospital, taking care of all passengers and crew –

Q. And –

A. – ailments.

Q. Ship's hospital was a facility on board the ship?

A. There's a facility on board the ship. Was even then hospital with a three rooms, I believe.

Q. Three rooms?

A. Yes.

[65] Q. And do you know approximately what time it would have been when you saw Dr. Gonzalez?

A. To the best of my recollection, about 4:30.

Q. And when you saw Dr. Gonzalez, what, if anything, did you report to him concerning your problem?

A. I described to him the problem as it manifested itself, like it started out as a tear at the bottom of my eye, I didn't worry, I was hoping it would go away or, as I relax, you know, something will, you know, shift to one side and so on, and further down the line timewise, about sailing time, it began to get wider and more fuzzy so my

vision through it could not be as good as it was when it first started or when it first appeared, yeah.

Q. Had you ever experienced anything like that before?

A. I never had.

Q. Did you have any idea what it was?

A. No idea.

Q. Now, when you went to see Dr. Gonzalez, the first thing you did was you present this problem to him?

A. I presented the problem to him. I described the problem to him.

Q. As you just described it to us?

A. Exactly.

Q. What, if anything, did he say in response to [66] that, or do?

A. Well, immediately he said, he asked me to lay down on the examining table, and he proceeded to look at my eye with an instrument that has a light in it. You called it an ophthalmoscope, but I didn't know what it was called at the time.

Q. And how long did this take place? How long did it take him to do this?

A. About two, three minutes he observed, he observed the other eye a little bit, and he told me he can't see anything.

Q. Did he ask to test your vision?



A. No, he did not, sir.

Q. And after reporting to you that he couldn't find anything, what, if anything else, transpired?

A. Well, he thought for a couple of minutes, and then he said, it looks to me that it could be a detached retina, so we have to remove that possibility, so I will recommend that you see a doctor when we arrive in Bermuda.

Q. Did you know what a detached retina was at that time?

A. I had no idea, sir.

Q. Had you ever been –

A. No, I wasn't.

Q. – acquainted with that term?

[67] A. Never heard that term in my life before.

Q. Did he indicate to you if there was any urgency associated with this visit to the doctor, the doctor in Bermuda?

A. He said, I will do that, I will advise that, and just take it easy. And I told him, as you know, I believe he knew of me and he knew of may role in the company, so I didn't have to do any strenuous manual work, just explaining the drawings and the specifications to the different people and we were examining logs and the ship's behavior. So he said, that's it, that I will make sure that you will see the doctor in Bermuda.

Q. Did he indicate what kind of doctor he was recommending you to see in Bermuda?

THE COURT: Counsel. Counsel, this is direct.

MR. ROSENBERG: Yes.

THE COURT: I know you know how to ask a direct question on direct. Try again, please.

Q. With reference to the doctor in Bermuda, was there anything else stated about the nature of his specialty or what he should do?

A. He will request from the agent, he said, an ophthalmologist. An eye specialist, excuse me.

Q. Were you given any other or further advice by Dr. Gonzalez?

[68] A. No, sir.

Q. Were you familiar with the course of travel that that ship was traveling at that time?

A. The course?

THE COURT: Where was the ship going?

Q. Right, destination.

A. The destination was Bermuda, and the ship had to go through the river about ten, eleven hours of sailing time before she went out to the open sea.

Q. And was there a pilot on board?

A. There was a pilot on board for taking out of the dock and a pilot for the river.

Q. And can you tell us what, if any, role the pilot played and how long it lasted?



A. Well, the first part is of very short duration. They both board the ship when she's alongside for ease of boarding. The technique is to take it away from the dock and line her up with the channel down the river, and then he disembarks right away with a tug boat, through the tug boat, and the other pilot takes over and assists the master of the ship to navigate through the river and narrows until she's out in the open sea. Before she's in the open sea, he disembarks the pilot boat.

Q. Pilot boat?

A. Yes.

[69] Q. Does that boat dock alongside the ship?

A. Comes alongside the ship while the ship is still moving just enough to keep course, and he disembarks and then the ship can continue on her own voyage.

Q. If it was desirable, could you disembark that way?

A. Definitely.

Q. You say it took 11 hours to get to sea through the Chesapeake Bay?

A. Chesapeake Bay, correct.

Q. Could you tell us approximately what time it was before you got out to sea?

A. About 3:30 in the morning, roughly.

Q. Did Dr. Gonzalez contact you at any time before the ship went out to sea?

A. He did not.

Q. Did he give you any advice except what you advised us after you first saw him?

A. No, he did not.

Q. Did he indicate there was any urgency associated with your visit to an ophthalmologist.

MR. BRADY: Objection.

THE COURT: We've already done this, not to mention it is direct.

Q. Now, Mr. Latsis, for the balance of the voyage [70] can you describe your activities to us, please?

A. Well, the first night we we had mostly, you know, welcoming the people, setting the ground rules, showing them a little bit the ship and had dinner. And because of my eye, I didn't feel very comfortable, so I withdrew at the earliest possible convenient time after dinner. And the next day my eye felt I could see better and the problem was improving.

Q. That was when?

A. That was Monday morning about 8 o'clock.

Q. When you got up?

A. When – well, got up and started preparing for this day's work.

Q. And what were your activities on that day?

A. On that day, we followed the same routine we had followed before. We had a meeting in one room to start the teams out to the various parts of the ship to take the data, and I was given one team that I took through



the machinery, the air conditioning and certain structures of the ships to define the specifications more clearly to them.

Q. And what was the state of your vision on that day after you got up and –

A. For the first half of the day, it started getting a little fuzzy again, but not very fast. By noon time, I started having a blockage of the center part of the eye, but [71] more persistent and darkening.

Q. At any time during this day did Dr. Gonzalez make contact with you?

A. No, he did not.

Q. And can you tell us what the nature of your activities were in the afternoon and evening of that day?

A. The afternoon, we continued after lunch with the same team, and we had a couple of meetings for consultations, question and answer sessions, and in the evening I had dinner and I withdrew again because I knew the eye was getting worse and I had blockage of the center of the eye at that time. I could see peripherally, but not to read or anything, just to see light and things that were happening. And I went to bed as early as I could.

Q. And on Tuesday morning?

A. On Tuesday morning, I woke up again about the same time because there was not an early arrival, and I knew that they had already notified the agent in Bermuda for me to go to the eye doctor. So –

Q. How was that communicated to you?

A. By the chief purser, the chief purser. The captain acknowledged that – one of the times the captain joined us at the dinner table and he says, I understand you have some problem with your eye, and I said, yes, in fact I think it's getting worse, and he said the specialist will [72] take a look at it and see what needs to be done. And we left it at that because I had no idea what it was and to what extent it was serious.

Q. And the ship arrived on Tuesday?

A. The ship arrived on Tuesday. About 11 o'clock she docked.

Q. 11:00 a.m.?

A. 11:00 a.m., yes.

Q. Did Dr. Gonzalez contact you at any time before the ship arrived on Tuesday?

A. He did not.

Q. And can you tell us what activities you pursued upon the arrival of the ship?

A. I went to the captain's office where the agent usually comes after boarding, and I reminded him that I need to go to the doctor as quickly as possible. Because by that time I had worries that this had to be attended perhaps very quickly. But again, I didn't know what it was.

Q. How did you come to that conclusion, that it required attention quickly?

A. Well, because my vision was getting poorer and poorer. By that time it was again – it had gone a step



further than the previous day as far as the morning recovery. It wasn't recovering almost completely, it was persisting in the center.

[73] Q. Did Dr. Gonzalez make any contact before you left the ship that day?

A. No, he did not.

Q. What disposition was made with regard to the meeting with the doctor?

A. The agent asked me to wait for a few minutes to half an hour that it would take to finish the formalities with the captain – he had to sign certain arrival papers – that he would personally take me to the doctor.

Q. Which is this agent your speaking of? Is that a company representative?

A. Yes, Mayor. No, he's an assigned agent for the ship course on the Island of Bermuda. The name of the agency is called Mayer something incorporated or limited, and the specific gentleman was a Captain Moore, who was the usual man. He's in charge of ship operations. And he visited the vessel and took me to the doctor.

Q. Did you get to the doctor's office by that means?

A. By the agent's car.

Q. And what time, approximately, was it that you got to the doctor's office?

A. I think we arrived back in Hamilton, which is about an hour and a half drive, about 1 o'clock, 1:15 or something.

Q. And who was the doctor? What was his name?

[74] A. Dr. Hamza.

Q. Do you know how to spell that?

A. H-a-m-z-a.

Q. And describe to us what transpired at Dr. Hamza's office?

A. Dr. Hamza –

Q. First heating.

A. – had already been warned by Captain Moore that he's dropping a patient to his office and he gave me an immediate appointment.

He asked me to describe my problem. I did, and he immediately became very serious because it sounded to him definitely that it was a detached retina. But again, he was very methodical, as it proved later, and he said I have to give you some eye drops to anesthetize the eye and dilate the pupil so you can see it clearly with a specific instrument that he used.

So he put these drops in my eye and asked me to wait in the waiting room for about 20 minutes, after which he looked at the eye and he was even more serious, and he says, you have a massive detachment of retina. It's caused like a ballooning effect.

Q. And what happened next?

A. He says, you cannot go back to the ship, you have to go immediately to the hospital, lay down on your back, [75] and I have to operate as soon as I can.



Of course, my state of mind at the time was terrible because I had no idea what was expecting me and that I had to be operated on. I asked him if I could fly back to the states, which I would have preferred, and he says, I don't advise it because the pressure of the airplane can worsen the detachment.

THE COURT: Mr. Latsis, would you be kind enough to listen to counsel's question and respond only to his question, please?

THE WITNESS: Yes, ma'am.

THE COURT: Thank you.

Q. Mr. Latsis, after this examination you have described to us, were you given any advice concerning hospital admission?

A. Yes, he called the hospital, Hamza, called an agent, he notified that he will put me in the hospital at least for the interim, and he was, as things were standing at the time, he planned to operate the next day.

Q. Was there any communication with home or with New York?

A. Not at that moment. I was asked if I'm going to go to the ship to pick up my things with the assistance, which I did, and I called home when I got to the hospital before I laid in bed.

[76] Q. This advice to lay down flat on your back, had that been given to you at any time before Dr. Hamza advised you of that?

A. No, sir.

Q. Was there any contact with Dr. Materna?

A. I seeked Dr. Materna's advice also from the hospital, but he was not in his office. But I gave him all the numbers, and also I told my wife on the phone to make sure that she communicated with him and explain to him the whole situation, gave him Dr. Hamza's telephone numbers so they can have a conference and see if that was the best course of action that was being advised to do.

Q. As far as you know, was such a conference undertaken between Dr. Hamza and Dr. Materna?

A. I didn't find out until the next morning early, when I called my wife again and she says, yes, she had contacted Dr. Materna. He would contact Dr. Hamza and he was contacting another specialist for detachment in New York to have a conference.

Q. With respect to the care that was undertaken on the following day at the hospital, this is the hospital in Bermuda, am I correct?

A. Correct.

Q. When were you admitted to the hospital?

A. I arrived at the hospital about 4:00 to 5:00 in [77] the afternoon, I believe.

Q. On that first day?

A. On the 16th, I think it was, two days later.

Q. And was there a procedure undertaken –

A. No.



Q. – at the hospital?

A. Just that he had to follow the instruction of the doctors immediately after checking in, taking the name and all that, to lay in bed and make sure that I wouldn't turn during the night, and I wasn't given anything to eat because the procedure was scheduled for next morning.

Q. And did you have a discussion with Dr. Hamza about the nature of the procedure?

A. He told me that he would complete procedure which I had to go through for him to operate on my eye and reattach the retina.

Q. Did he describe how it would be undertaken?

A. Very vague.

Q. What steps?

A. In very vague terms. He says it's a usual procedure, that's all.

MR. ROSENBERG: If your Honor please, I would like to present the witness with exhibit 5, if I might.

THE COURT: Any objection, Mr. Brady?

MR. BRADY: No, your Honor.

[78] THE COURT: Please do so.

Do I have the originals here?

MR. ROSENBERG: Yes.

For the record, I offer exhibit 5 in evidence.

THE COURT: Mr. Brady?

MR. BRADY: No objection.

THE COURT: 5 is received.

(Plaintiff's Exhibit 5 received in evidence)

MR. ROSENBERG: And I would like to present it to the witness, with the Court's permission.

THE COURT: Please do.

Q. Mr. Latsis, the form, which is exhibit 5 for identification, indicates on it the Meyer Agency, 35 Church Street, Hamilton, Bermuda, am I correct?

A. That's correct, sir.

Q. Is that the agency you spoke of earlier?

A. Yes. Meyer, yes.

Q. Did this document on Chandris' heading concern itself with your care?

A. That is correct.

Q. And can you tell us if you recognize the signatures on that page?

A. The signature of the master I recognize because I've seen it before. Dr. Gonzalez's signature I didn't know, but you can read it.

[79] Q. And in addition, there is the signature of the purser, I correct, the purser on board the ship?

A. The one in the middle seems to be the person, because he spelled his name.



Q. And the master of ship was the captain, am I correct?

A. That is correct, sir.

Q. And this form is a request for medical treatment, am I right?

A. Request for medical treatment.

Q. And how were you designated on this form?

A. Name of crew member: Latsis, Antonios.

Q. And what was your position as designated on this form?

A. Crew member.

Q. Is that an accurate statement?

MR. BRADY: Objection; that's not what the document says.

MR. ROSENBERG: It says "name of crew member."

THE WITNESS: Name of crew member.

MR. ROSENBERG: Name of crew member.

MR. BRADY: And you asked for position, and there is an indication for position.

MR. ROSENBERG: No, no, I asked the name.

THE COURT: All right, and the second question [80] was, what's the position, and the position, would you read that to the jury, please, sir?

THE WITNESS: Super engineer. Super –

THE COURT: Maybe you can spell it, if you want.

THE WITNESS: It is not completedly spelled.

Excuse me. I can see better this way.

Supt. engineer.

THE COURT: S-u-p-t?

THE WITNESS: S-u-p-t, period. Kind of fuzzy. I don't know why. Supt., superintendent engineer, I suppose, in short.

Q. And this is dated?

A. May 14, 1988.

Q. Mr. Latsis, the night of the admission you were in the bed in the hospital, you've described that, correct?

A. Yes.

Q. And the next day, can you tell us to the best of your recollection what transpired?

A. The next day, Dr. Hamza came to visit me after he was called by my wife, and he told me that he had a conference call with Dr. Materna and another doctor whose the name I didn't know at the time – I didn't recognize, rather. It turned out to be Dr. Mittl. And that that they want me to call them and that he was going to go ahead, with their consent, their permission or their agreement, with the [81] operation or procedure to reattach the retina.

Q. Can you tell us how you felt on that day?



A. Psychologically terrible, because I didn't know how serious the problem was. I knew that the operation, on an isolated island with one doctor eye specialist, he gave me very limited possibilities. If the doctor was not as skilled as I could have had in the United States, I had no choice. I felt very bad. But the doctor sounded good, but again, I didn't have options open to me at all.

Q. And did he give you any idea as to the prognosis in terms of the outcome of that surgery before it was undertaken?

A. Yes. I asked him the question specifically, and he said, well, if – I am confident that I can do that because I've done it before several times, and the possibility of seeing again are good, but to what extent, it varies. The fact that you have been with detachment for two days is not a good starting point.

MR. BRADY: I'm going to object to that statement, your Honor, and ask that it be stricken since Dr. Hamza is not going to be a witness here.

THE COURT: Mr. Rosenberg?

MR. ROSENBERG: Well, in terms of the probative value of that hearsay statement –

THE COURT: First of all, is there an exception [82] that is applicable?

MR. ROSENBERG: I'm going to refer the Court to what I believe should be the statement concerning the state of mind of the declarant, who is, in this case, and the occasion for it –

MR. BRADY: I have no objection to his description.

MR. ROSENBERG: Reference is 804.

THE COURT: Just tell me the rule.

MR. ROSENBERG: (B)(5), your Honor.

THE COURT: I'm sorry?

MR. ROSENBERG: (B)(5).

THE COURT: (B)(5)?

No. The statement which you heard, ladies and gentlemen, in response to the prior question is going to be stricken from the record. What that means is that it will play no part whatsoever in your considerations and will not be considered as evidence in this case.

Please proceed, sir.

Q. Can you tell us, sir, was the surgery undertaken?

A. Yes, it was.

Q. And can you tell us how that progressed from the poinit of view of what you recall about it and what you were aware of?

A. I'm not sure I understand the question.

[83] Q. Well, were you put to sleep during the course of that procedure?

A. Yes. I was then prepared for – I was given an injection for the first step of hypnosis or anesthesia, and then they told me I would be feeling drowsy and then they will wheel me to the operating or preparation room



and then they will give me the full-fledged anesthesia. And just, that's as far as it went, and they did proceed to do that. And the next thing I remember back into the room.

Q. You were completely asleep during this whole procedure, am I correct?

A. Yes.

Q. Now, at the time that you were admitted to the hospital on the morning following, can you tell us, tell the jury, what vision you had in your right eye?

A. I cannot see at all for 75 percent of the center of the eye. Could only see light on the sides.

Q. And following your awakening in your room – it was the hospital room, I take it?

A. Yes.

Q. How long a period of time did you remain in the hospital?

A. Another five days after the operation.

Q. And during that interval, were you seen periodically by Dr. Hamza?

[84] A. I was.

Q. And what, if any, steps were taken with regard to your eye care in that time?

A. I had an eye patch, and he said it would be examined by him at least once a day. The first day he came back in the afternoon and the next day he came twice. And he said it was progressing well. I had eye

drops and washes and pain killers, which I didn't know what they were. They were minute little pills.

And he asked me if I wanted to take them off gradually as the days progressed so I can feel more of the progress of the healing and I could report it to him, which I did, and eventually I could take one of these pills every six hours.

And at one point, the third day that I could feel more of the progress, I felt that there was some kind of irritation in the eye which I could not feel the second day, for instance, and I called the attending physician at the hospital and I told him, and he prescribed – he reported it to Dr. Hamza.

He came and gave me an antibiotic injection in the eye all around, and he says he could see an infection developing again. And after that, it felt much better and the progress was steady to where he would allow me to fly back to the States.

[85] Q. And when was it that you left Bermuda?

A. I left Bermuda, I believe, the fifth day after, but I could be wrong by one day.

MR. ROSENBERG: If your Honor please, I would like to offer into evidence exhibit 9, the hospital record concerning that admission.

THE COURT: Mr. Brady?

MR. BRADY: No objection.

THE COURT: Exhibit 9 is received.



(Plaintiff's Exhibit 9 received in evidence)

MR. ROSENBERG: May I present it to the witness, your Honor?

THE COURT: Yes, sir.

Q. On the face of the hospital chart, exhibit 9 in evidence, it indicates separation date. Is that approximately the date you left, the 22nd of May?

A. The 22nd, yes.

Q. And how were you feeling at that time physically?

A. Well, physically I was allowed to take a shower the fourth day after the operation by protecting my head, you know, and even if some water came into the eye it wouldn't have been a tragic thing anymore. I still had to maintain a patch because I was very sensitive to light.

And I was asked not to – I was dictated not to lift any weights, not to exert myself at all with any [86] lifting, not to lean over and read things over a table or not to lean over, period, as much as I could, and then be taken care of by my regular doctor, ophthalmologist or specialist in New York, who will take care from there on to tell me what I do.

Q. Who did you make contact with when you returned concerning your care?

A. Immediately Dr. Materna contacted me in Bermuda and told me that he had arranged for me to go directly from the airport to Dr. Mittl's office because my arrival time was about noon, early in the afternoon, and

he had made an appointment. And I proceeded to Columbia Presbyterian Hospital, Harkness Eye Center, I believe it's called, in the Bronx.

Q. And were you examined there?

A. I was examined.

Q. By Dr. Mittl?

A. By Dr. Mittl, whom I met for the first time. He proceeded to examine the eye for the infection first, and then he examined the other eye for possibility of retina detachment or beginning of it.

Q. And did he report any findings of the other other eye?

A. He told me I didn't need any more antibiotics on my operated eye because the infection was under control, and [87] that the left eye, he was happy to report that there was no detachment of the retina at all or sign of it.

Q. And did you continue under his care, Dr. Mittl's care?

A. He told me – he gave me some eye washes, some antibiotic drops to keep changing on my right eye, and told me that in one week he will recommend for me to have an appointment with him to see how it progresses.

Q. And thereafter, from time to time did you continue under his care?

A. Then he proceeded after that to give me another, two weeks later, another appointiment. He felt that it was progressing well enough the first week to wait another two weeks, and at the end of the two weeks, he said now



you can come in two weeks again before you go back to work, as he anticipated the progress to be.

Q. Over what period of time did you see Dr. Mittl?

A. The first day, and one, two, three times after that.

Q. With respect to the use of your affected eye, your right eye, were you able to use your eye in this period of time?

A. The first time I visited him, he asked me to read the chart with that eye. I could not read even the largest letters at all. But he persisted, and he said stand up and [88] go as close to the chart as you can until you start seeing something. So I believe about six feet I saw the largest letter. That's about it. And he thought that was good progress for the time between the operation.

Two weeks later, he asked me to see sitting down. I could not see it, but I could see more, a little bit of an outlinie. He considered that good. And on the third time before I went back to work, the improvement was very slight, and he explained to me that things – he will give it six months to see how the progress will come, but not to be very optimistic because it could or could not come back to the original vision.

Q. And were you able to use your right eye in normal activities in any way during that period of time?

A. No. He again warned about not rushing to lift anything, any weights. Maybe my briefcase, that's about all. And not to lean over a lot, not to stoop down over things, because that would put pressure on the eye, and he wanted to make sure that the healing was complete way beyond the prescribed six weeks.

Q. Did you have a covering for your eye for part of that time?

A. No, it was not necessary to keep covering, but he advised me if I didn't feel, which I didn't feel, comfortable with strong light, to use sunglasses and to [89] protect that eye and until it progressively felt more and more comfortable, which he anticipated it would.

Q. And you returned to work ultimately?

A. At the fifth week, about, after my return, fifth to sixth – it was the Fourth of July weekend – before the weekend, I flew back to Miami with my wife and with the intention to start work, which I did the week after.

Q. How was your vision by that time in your right eye?

A. The vision, I couldn't tell any great improvement. I didn't have my own chart or the distances and all this, but it was good in terms of the eye feeling better and in terms of being able to see colors, see light, see objects in the distance, large objects. And I was anxious for that to improve.

Also, there was distortion in the middle of my eye. Like a frame of a door, for instance, looked like it was wharped when I looked at it through the middle of my eye, and I reported that to the doctors as well.

Q. Have you ever experienced anything like that before that period of time?

A. Never.

Q. And when you returned to work, what kind of activities did you engage in?



A. I started again with my normal routine. I took [90] all the information that was there from the ships, because we were attending several ships at the same time. And I proceeded to the first ship – I was in the port of Miami the coming Friday – the Britanis, which we routinely visited every Friday and Sunday. And Mr. Kaparis was overseas, so I kind of filled in for him. I took care of all the immediate problems. He called from time to time. I record to him the progress.

How far do you want me to go with this?

Q. Well, for how long a time did you remain on duty in Miami that particular tour or that particular segment of time, approximately?

A. We are talking July and August, and in August I started coming back to New York to visit the Galileo. She was on her last couple of months of cruising before she will go to the conversion. Take some of the specifications, relay them to the different shipyards that had questions.

I visited the Amerikanis, also, in the Port of New York and doing some work on her. So the weekends were taken by visiting New York for the next four weekends, and returned to Miami during the week to attend to all the other office activities, and Friday the Britanis.

On September I took – yes, I took vacation for three weeks, and one week visiting the construction people in Greece, the factory. And the first of October when I [91] returned to the states, I boarded the Galileo and started the six months' conversion trip to Germany.

MR. ROSENBERG: If your Honor, please, I would like to offer into evidence the records of Dr. Mittl, Plaintiff's Exhibit 8 in evidence.

THE COURT: Mr. Brady?

MR. BRADY: No objection, your Honor.

THE COURT: Exhibit 8 will be received.

(Plaintiff's Exhibit 8 received in evidence)

Q. Did you have occasion during the summer of 1989 to visit with Dr. Mittl at his office?

A. Yes, I did, sir.

Q. And when was the last time you saw Dr. Mittl?

A. The last time up to this date, today?

Q. No, no, when was the last time?

A. Oh. The last day I saw him before I went back to work.

Q. And have you resumed treatment with any other ophthalmologist following seeing him?

A. Yes, he told me – the doctor I forgot the actual name before, Dr. Mittl, told me I could return back to Dr. Materna's care, and the problem with the eye, he could monitor my progress very competently, and if I needed any more specific conference, he will have it with him. And I did just that.

[92] Q. And have you been the patient of Dr. Thomas Materna concerning your eye care since that time?



A. I certainly have, yes, sir.

Q. Up to the present time?

A. Up to the present time.

Q. Now, you indicated to us that the Galileo was about to embark on a major reconstruction?

A. Yes. Yes, sir.

Q. When was that?

A. She was going to do the reconstruction from the fall of 1989 to the spring, middle spring of 1990.

Q. And did you –

A. Which she did.

Q. Did you participate in that work?

A. Yes, sir, I did.

Q. And did you travel with the ship?

A. I joined the ship in the Port of Philadelphia. I believe it was the 30th of September. We proceeded the same day, the same afternoon, to sail with destination Bremerrhaven, Germany, with a number of technicians on board for the removal and number of the people from the shipyard and Mr. Kaparis and another superintendent engineer with whom we divided the work supervision of the ship.

Q. For how long a period of time did you remain on that particular job?

[93] A. For six months, sir.

Q. And with what frequency did you work on the vessel in that period of time?

A. Every day, seven days a week, from morning to about 11 o'clock in the evening.

Q. How was your vision during that period of time?

A. By that time, I believe – I don't recall exactly what date. I had visited Dr. Materna I think it was before I went on vacation, and he examined the eye and he took the measurements and everything. He said let's hope that something better will happen, but at this moment it looks like it's stabilized at this level of vision.

Q. And can you just describe to us what that level of vision was at that time?

A. Without corrective lens, the normal distance – I cannot see the large letters on the chart. With corrective lenses, perhaps I can see the outline of the large letters.

Q. Did the appearance of your right eye, was that altered in any way in the course of this experience?

A. Definitely. My peripheral vision, because of the operation, the buckle that they put on the eye to retain the retina in position, I lose a lot of my peripheral vision because the eye cannot move in that direction. And the chart is what I just told you, plus the size of the eye is smaller and the agility seems to be less.

[94] Q. Do you have any difficulty in moving in ocular movements, moving your eye from side to side?

A. Yes. The right eye is restricted definitely. You can observe it by looking at it.



Q. Now, before this procedure was undertaken, did your eyes look the same, your left and right eye?

A. Yes, they did.

Q. May I ask that the witness be permitted to step down so he can stand within distance and the jury can observe that?

THE COURT: Why don't we let him do that when he steps down. Why don't we just keep going now, please.

Q. This job on the Galileo, what did it entail?

A. It entailed supervising – first of all, we divided all the specifications and different teams attended to different tasks and removals, reconstruction; putting bow thrusters on the ships – they are propellers that they thrust the ship sideways and they help dock and undock; totally remove the two regular propellers; overhauling the main engines; rebuilding the boilers; totally reconstructing the accommodation spaces – cabins, adding cabins, adding lounges and totally reconstructing all the public rooms, dining rooms. I can go on for hours.

Q. That's enough.

What were your duties in terms of this kind of [95] work?

A. My duties were basically overall, because I was a second man in command, to overall supervise the project. So if something escaped any other's responsibilities, I was to take care of it and bring it to the attention of Mr. Kaparis and our committee, and specifically I did. I also was in charge completely of the dry docking itself, of the

bottom removal of the ship, cleaning, removing the propeller, putting the bow thrusters, putting the new air conditioning units, to do the evaporators for producing water, all the structures because we have a – I was the only attending naval architect.

The new structures they put on the ships for classifications, approval, stability, electronics. We added satellite communication systems. There's too many to – there's a telephone-book-size of specifications that we attended to.

Q. And were you compensated during that period of time at the rate you have indicated to us earlier?

A. I was on this full employment by Chandris with my regular salary.

Q. And the charges for the hospital care in Bermuda, who paid for those?

A. The charges were funneled through the agent to the Chandris, Incorporated in New York.

[96] Q. And with respect to your follow-up care, who paid for that, with the ophthalmologist in New York?

A. The ophthalmologist also, I submitted – I received his bill and I submitted it to Chandris for payment under the regular medical coverage.

Q. And after the conclusion of the Galileo's work, what other work did you do for Chandris?

A. Well, first of all, I returned on board the Galileo. Of course I crossed the Atlantic again for three trials. We



went to Fort Lauderdale. We also had some preparation there for crews.

Unfortunately, something else happened to that ship and we sailed up north to Norfolk, and we redry-docked the vessel for another week, sailed back with the vessel back to Miami, and after that she started sailing regularly and she was on weekly attendance by myself and another engineer.

Q. And did you have any other duties with respect to other vessels in the fleet, the Chandris fleet?

A. Yes. Because of my position, I was not limited to any one or two specific ships, I was in charge of all the ships that tradeed in the area, as I originally said.

The new ship, the Horizon, arrived a couple of months later, May, a month and a half, actually, May, early May of 1990, in the Port of New York, after which time I [97] came to New York and I stayed with her through the inspections of the Coast Guard, classifications, and so on for her commissioning for 12 days.

Q. For how long a period of time did you remain in the employ of Chandris company?

A. Totally, from middle of January of 1989 to the third week of November of 1990.

Q. Can you tell the jury the circumstances of your termination of employment from Chandris?

A. Well, towards the end of the large project, the conversion of the Galileo to Meridian and the commissioning, total commissioning and successful running of the Horizon, I seemed not to have a central project, major

project besides the condition of the ships and keeping them in good running condition.

And so I inquired into the company's headquarters about my role in the future, and for many reasons, but in particular my duties and also the fact that I was expected to move my family to Miami, which was a major undertaking on my part and a definite move.

So the word trickled down to me through the New York office that when they anticipated the plans they had were not quite shaping up the way they thought they were going to, and they didn't exactly know how they were going to use me, which I interpreted to be you can take your own [98] action or you can leave. So it would be promised by Mr. Kaparis that there would be a letter coming to me regarding the circumstances. I never got that letter.

Q. And when when you left Chandris, what kind of employment did you seek out?

A. I just passed the word around to the people that I know in the industry, which I know quite a few, that I'm available. There was no particular offers directed my way, so I proceeded to reestablish myself as a consultant, a practicing consultant, on which I gradually started getting work.

My first assignment was with the Maritime Administration reactivating ships for the Gulf War for Desert Storm.

Q. And how long did that last?

A. That lasted for a month and a half on one ship and about 20 days on another ship.



Q. And how were you paid for those jobs?

A. On one occasion I was paid as a supervising engineer for the major contractor, Steven's Technical Services. Another second assignment I was the contractor myself, because I had obtained my maritime administration's contractor status due to my qualifications, and they gave me the assignment directly.

Q. Did you form a company to do work on your own?

[99] A. I was, yes, advised on the regulations of the maritime administration that you have to have a company, an entity, which has to be examined by them, and I did create a New York operation called LMC Marine Technical Services.

Q. Now, can you tell us how you faired as far as your income is concerned following departure from Chandris' employment?

A. Well, there was a flurry of activity, as I said, around the beginning of 1990 which ebbed down quite a bit as the year progressed and the war had ended, some assignments from Chandris themselves for four or five days, I believe the first year, to prospective new acquisitions of ships, tankers.

THE COURT: Excuse me, Mr. Latsis. Could you answer counsel's question, please? He asked specifically about the income rather than each individual position.

Could you answer him, please, sir?

THE WITNESS: Yes. What was my income at the end of the first year?

THE COURT: Yes.

THE WITNESS: The net income came to – I believe I have it somewhere. It was 48,000 –

I don't have it with me. I've given it to you, I believe.

Can I go to my briefcase, please?

[100] MR. ROSENBERG: If your Honor please.

THE WITNESS: Because I have it written.

MR. ROSENBERG: He has notes he made. I don't have a copy.

THE COURT: Do you have something that you can –

MR. ROSENBERG: I have an exact copy. I made a Xerox copy.

THE COURT: Have you shown this to Mr. Brady?

MR. ROSENBERG: It was done this morning. It was a compilation. I don't expect to offer it into evidence. Just notes he made from the tax returns that have been marked in evidence.

THE COURT: Give one copy of it to the witness.

MR. ROSENBERG: That's the only one I have, your Honor. This is something else.

A. For my tax returns I reviewed today, 1991, at the end of the year my net income was 39,874. The gross, of course, was larger, but I had to deduct out-of-my-pocket expenses for performing the business.



THE COURT: So that is net?

THE WITNESS: That is net, as though it was a check, for instance, for me.

Q. And 1992?

A. 1992. 1992 was a better year. It was $58,358, after expenses.

[101] Q. And with respect to your physical condition, your vision, can you tell us what that is today?

A. The vision, unfortunately, has not improved at all since the examination September of 1989.

Q. And does that have any impact on your work?

A. On my physical work, yes. My peripheral vision is very important. I inspect ships, I inspect tanks, I go to dark areas, areas with a lot of steel around me. I always have to be much more careful than I would than I was before.

Q. Why is that?

A. Because of my peripheral vision and objects being near me and being afraid of injury, having in a distance not a good depth perception because only one eye can see in normal acuteness. And in driving also I have to be much more careful in the peripheral vision turning to the right. I have to turn my whole head all the time, where before my peripheral vision was enough to cover a big area.

And also the natural worry that if something happens to the other eye, always safeguarding this, you

know, much more and being limited to what assignments I will take.

Q. And what about close work, has any effect on close work?

A. My eye gets more tired now, the good eye, more [102] often because it doesn't have the assistance or the balance of the other eye. To play sometimes also tennis, I'm a right-handed person, so the eye depth perception is much more difficult. In fact, at the beginning I had quite a bit of difficulty. Now slowly I'm adjusting.

Q. And what about your pastimes, your free time, your –

A. I have found that I'm not doing as much reading, I'm not doing as much watching television, trying to preserve the strength of my good eye for necessary things at work.

MR. ROSENBERG: May we approach, your Honor?

THE COURT: Sure.

(At side bar)

MR. ROSENBERG: I wanted to plan some time. Did you indicate you would take a recess?

THE COURT: Yes, we will have ten minutes.

MR. ROSENBERG: Okay, let me just collect things during the recess rather than stumbling around now.

THE COURT: How much longer is it going to be?



MR. ROSENBERG: Not much longer.

THE COURT: How much longer? We've been going an hour.

MR. ROSENBERG: I would say ten minutes at most.

THE COURT: Okay. But just ask the questions.

[103] MR. ROSENBERG: I'm trying.

THE COURT: You are better, but you can do better.

MR. ROSENBERG: There's a competing thing. I want complete it, and –

THE COURT: Just useful questions, okay?

MR. ROSENBERG: Okay.

THE COURT: Thank you. We'll take ten minutes now.

(In open court)

THE COURT: Ladies and gentlemen, we are going to take a very short recess now to allow you to stretch your legs, use the facilities. And if you can come back in ten minutes, please. Thank you.

(Jury leaves courtroom)

THE COURT: Thank you.

Do we have copies of the exhibits, friends?

MR. BRADY: I thought all the originals were provided.

MR. ROSENBERG: All the originals are here. You want additional copies?

THE COURT: The answer is there is no copy. Okay.

MR. ROSENBERG: My own copy.

MR. BRADY: We each have almost a complete set. [104] We each have a set of our own, and the originals were provided to the Court.

THE COURT: Okay. All right.

MR. ROSENBERG: Is that all right?

THE COURT: Well, generally we get a copy, but if we don't have a copy, we don't have a copy okay.

MR. ROSENBERG: We can do it overnight, if you like, your Honor. We can have another copy made.

THE COURT: If it's not a lot, that would be a big help. Thank you.

(Recess)

(In open court; jury not present)

THE COURT: Following Mr. Latsis we will have some cross. Do we have an estimate?

MR. BRADY: I would say it's likely to go to the end of the day, your Honor, maybe. I hope to finish sooner, but –

THE COURT: Okay.

MR. BRADY: I'd say there's a fair chance that it would be.



(Jury enters courtroom)

THE COURT: Thank you.

Mr. Rosenberg, go right ahead, sir.

MR. ROSENBERG: I would like to offer into evidence exhibits 10 and 11, a 1989 and 1990 W-2 statement, [105] tax statements of Mr. Latsis.

THE COURT: Mr. Brady?

MR. BRADY: No objection, your Honor.

THE COURT: 10 and 11 will be received.

(Plaintiff's Exhibits 10 and 11 received in evidence)

MR. ROSENBERG: And what has been marked as exhibits S and T, the 1991 individual and corporate returns of Mr. Latsis and his company.

THE COURT: Mr. Brady?

MR. BRADY: No objection.

THE COURT: S and T will be received.

(Defendants' Exhibits S and T received in evidence)

MR. ROSENBERG: No further questions, your Honor.

THE COURT: Thank you, sir.

Would you care to cross-examine, Mr. Brady?

MR. BRADY: Yes, your Honor.

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CROSS-EXAMINATION

BY MR. BRADY:

Q. Good afternoon, Mr. Latsis.

A. Good afternoon.

Q. I believe you testified today that you have a couple of licenses from the Greek Merchant Marine; is that correct?

[106] A. Yes, sir, I do.

Q. A second mate's license?

A. Second mate navigator and chief mate.

Q. And chief mate.

Do you recall testifying in this matter in a deposition in January of this year?

A. Do I remember if I was asked the question?

Q. I'm not asking that now. I'm asking you really if you recall testifying –

A. No, I don't recall.

Q. – at a deposition?

A. I do not recall.

Q. You don't recall we had a deposition January 26, 1993?

A. Oh, yes. Whether I was asked the question, I don't remember.



Q. We'll get to that in a minute.

Subsequent to that deposition, were you given a copy of the transcript of the deposition?

A. Yes, sir.

Q. And did you have a chance to review it?

A. Yes, I did.

Q. And did you execute that transcript as being accurate with your signature at the end of it?

A. Yes, I did.

[107] MR. BRADY: I would like to offer into evidence, your Honor, a copy, or the original, actually, of the transcript of Mr. Latsis' deposition as exhibit B.

THE COURT: Mr. Rosenberg?

MR. ROSENBERG: I have no objection.

THE COURT: Exhibit B will be received.

(Defendants' Exhibit B received in evidence)

MR. BRADY: Thank you, your Honor.

Q. Mr. Latsis, do you recall being asked the question during that course of that deposition if you had any licensing from any maritime authorities?

MR. ROSENBERG: Objection, your Honor. May we have the line and page and specific question?

MR. BRADY: I'll get to that.

Q. Specifically at page 7, lines 18 to 21.

A. Yes, I do. I do, sir.

Q. Do you recall that?

A. Yes.

Q. Do you recall being asked the following question: "Do you have any licensing from maritime authorities, Coast Guard, or any other maritime entity?"

A. Correct, sir, I was.

Q. And do you recall what your answer was?

A. No.

Q. Mr. Latsis, when you worked for Chandris, what [108] was your usual work week?

A. My usual work week would be, if a ship was in port, for instance, in Miami where it was based, I will go to the office first thing in the morning, see if there was any transmissions from the other ships requesting assistance or whatever.

Q. What day of the week would that be?

A. That would be – well, in Miami the ship was the Britanis on Fridays and Sundays, and the Galileo on Sundays. And on Sundays, I believe –

Q. And what would you do on Monday?

A. Monday we'll go back to the office and again start the routine of examining all transmissions from the ship and see what the immediate attention they needed. Sometimes they needed emergency attention. And then we will proceed with the projects that we had planned for maintaining the ships as we knew them and as we had



planned in attendance for upgrading or repairs as necessary.

Q. And that would all be done in the office in Miami, correct?

A. That is correct.

Q. And the same is true for Tuesday?

A. The same is true for Tuesday.

Q. And for Wednesday?

A. For Wednesday.

[109] Q. And for Thursday?

A. For Thursday, however, I have to make a correction to myself. The ships in Puerto Rico were sailing from Sunday – from Monday to Tuesday. So on occasion we would go to Puerto Rico. I would fly Sunday night and I would be there Monday for the attendance and sail with them from St. Thomas Tuesday night and come back Tuesday evening from St. Thomas, so that broke the week.

Q. But that wasn't the usual week. That was as necessary, correct?

A. That was as necessary, as planned, yes.

Q. I'm just trying now to get the understanding of what your usual work week was.

And Monday through Friday, what were your hours in the office in Miami?

A. From officially 9:00 in the morning to, again, officially 5:00, but a lot of times we stayed later.

Q. I see. And when the vessels were in port in Miami, what time did they arrive in port in the morning?

A. They arrived about 7:30, 8:00. New York at 8 o'clock.

Q. And when did they sail again?

A. Again, it varied, but normally about 4 o'clock to 5:00.

Q. And your visits aboard those ships would occur in [110] port on the weekends, then, correct?

A. They would occur in port on the weekends, correct.

Q. With the exception of Puerto Rico?

A. With the exception of Puerto Rico and the exception of the times that I took a trip with the ship.

Q. Now, when you went to visit one of these ships, for instance, if you had to go to visit the ship in Puerto Rico, would your expenses of such visit be reimbursed?

A. Yes, they was.

Q. And isn't it true that the way that was done was you would submit an expense report, which would then be reimbursed by the company?

A. Correct, yes.

Q. And you prepared those expense reports yourself, correct?

A. I did, yes.

Q. And you first became an employee of Chandris in January of 1989?



A. That's correct.

Q. And can you tell me approximately how many days during the month of January 1989 you spent attending vessels as part of your job?

A. In the wintertime, it would have been three days on the weekend, Britanis, Galileo, Britanis, Friday, [111] Saturday, Sunday.

Q. Are you saying that was every week?

A. Of course. It was in the port that we were based.

MR. BRADY: I would like to offer into evidence now Defendants' Exhibit D, if I may, your Honor.

THE COURT: Which is, please?

MR. BRADY: Which is a copy of the Chandris check and expense sheets prepared by Mr. Latsis, as well as the support of what they are for.

THE COURT: Did you say, Mr. Brady, one check, or many?

MR. BRADY: It's a copy of a check, one check, with lots of support data behind it. The check itself is dated April 18, 1989.

THE COURT: Thank you.

Mr. Rosenberg?

MR. ROSENBERG: I have no objection. The date is related to a different time than the question, but I don't have any objection to it.

THE COURT: Okay. I'm sorry, sir, tell me again the designation on the exhibit.

MR. BRADY: D.

MR. ROSENBERG: D, as in David.

THE COURT: D will be received.

[112] (Defendants' Exhibit D received in evidence)

MR. BRADY: Thank you, your Honor.

And may a copy of that exhibit be given to the witness, please?

THE COURT: Certainly.

You folks don't need to ask. You can put the exhibits before the witness.

MR. BRADY: Thank you, your Honor.

Q. Mr. Latsis, if you would turn about halfway through that exhibit, I believe you'll find a page dated February 5, 1989, and entitled "Travel Expenses."

A. Second page, you said?

Q. No, I think it's about halfway through, sir.

Allow me to show you a copy.

A. Yes, because the first page here is a check, copy of a check.

Q. Well, that's the first page.

A. Which page are you –

Q. About in the middle of the exhibit.

A. Okay.

THE COURT: Maybe you could find it for him, Mr. Brady, please.



Easier said than done.

MR. ROSENBERG: I have a copy of what I think you're looking for. Is this it?

[113] MR. BRADY: That's it.

MR. ROSENBERG: It should be in there.

THE COURT: Would you put it before the witness so you can question.

MR. BRADY: Here it is.

THE COURT: Okay, fine. Good.

Q. Now, Mr. Latsis, that is your summary of travel expenses for the month of January 1, '89, is it not?

A. Yes, it appears.

Q. And you signed it, didn't you?

A. Yes, I did.

Q. And is there any indication on that document of trips to any vessels?

A. LaGuardia Airport to Miami.

No, there doesn't appear to be any trips to a ship, but the ships were attended in Miami.

Q. Well, how did you get to the ship when it was in Miami?

A. By car, sir.

Q. And was there a parking fee there?

A. Not on the parking fee – are you referring to the parking fee? That would say here. This is for leaving the car at the airport where I flew away and came back.

Q. Well, was parking free at the terminal in Miami?

A. Yes, it was.

[114] Q. So you have nothing to indicate that you attended any ships other than in Miami?

MR. ROSENBERG: Objection to the form of the question, your Honor.

THE COURT: Perhaps it could be directed to this document.

THE WITNESS: Can I answer the question?

MR. BRADY: I'm trying to direct it to this document, your Honor. I didn't get to finish the question.

THE COURT: All right. Go right ahead. Finish it, and we will hear it again.

Q. Aside from this document before us, do you have any documentation which would indicate that you attended any vessels in Miami during the month of January 1989?

A. No, sir, because there's some expenses associated with that.

Q. How about during the month of February 1989? How many trips did you make during that month?

A. All the time that the ships were in Miami, I attended them every time they were there. So if there were three calls – I don't recall the schedule by heart. The Galileo, and if Britanis were in – the Galileo was in Miami. The Britanis was in Miami part of the time.

Q. And were you the only superintendent engineer in the office?



[115] A. No, another two along with me. And Mr. Kaparis was the supervisor.

Q. And so did all three of you go to every ship every time in Miami?

A. No.

Q. Just you?

A. Mr. Kaparis didn't go. Mr. Kapetanakos went to the Britanis usually, and I went to all of them because I was the second in command.

Q. What about Mr. Salvatore Amar?

A. Mr. Amar also would go to the Galileo more exclusively than Mr. Kapetanakos because he had specific responsibilities related directly to that ship.

Q. And in those cases where other superintendent engineers were attending the vessels, you also accompanied them every time?

A. Correct.

Q. Every time?

A. I didn't accompany them. I went to look at other areas of the ship.

Q. But you went together?

A. Not necessarily. At different times.

Q. All right. But what I'm saying is that on all of those occasions, even if you attended a vessel yourself, even if another – excuse me. Even if another [116] superintendent officer attended the vessel, you also would attend the vessel?

A. Correct.

Q. And there would be no expenses to indicate that this was the case, would there?

A. No, sir.

Q. Let's look at the month of February '89. Aside from the purported visits in Miami, did you visit any ships anywhere outside the Port of Miami?

MR. ROSENBERG: Objection to the characterization, "purported."

THE COURT: Overruled.

THE WITNESS: Excuse me. May I ask –

THE COURT: Would you like that read back, sir?

THE WITNESS: No, I don't understand the question. Am I supposed to be reading from the log? I don't have a log, sir.

Q. You are supposed to be answering the question.

THE COURT: Would you ask the question again, please, sir.

Q. Aside from these trips that you described making to the vessels in Miami every weekend?

A. Yes.

Q. In February of 1989, did you visit any ships anywhere else?

[117] A. I don't recall, sir.



Q. All right.

A. Because I don't have a log.

Q. Referring to the second page of exhibit D, which is before you.

A. Okay, second page.

Q. Second page, sir. Start from the beginning, please.

A. It says March 6 here, yes.

Q. Yes, dated March 6. And it's titled "Expenses February 1989," is it not?

A. Correct.

Q. And it is signed by you, correct?

A. Absolutely correct.

Q. You prepared and submitted this document also, correct?

A. Yes, sir.

Q. And does that indicate trips to any ships?

A. Yes, to the S/S Victoria in San Juan.

Q. When was that?

A. That was February 5 in Puerto Rico.

Q. And what happened there?

A. Then I sailed, obviously, from this with the ship to St. Thomas, and from St. Thomas I returned back to Miami.

Q. And you flew from St. Thomas back to Miami, [118] correct?

A. Yes.

Q. And aside from that trip to Puerto Rico, no other ship trips are shown on this expense sheet, are they?

A. No. Some parking, gasoline and –

Q. Well, the parking and gasoline would be for what, sir?

A. If it was a rental car outside of the Miami area where I had that car leased by the company.

Q. Outside of the Miami area? Where outside the Miami area?

A. I suppose it would be Puerto Rico. We went also to Washington a couple of times.

Q. Is there a receipt attached to these documents that would show that expense?

A. There was originally, I hope, yes. There must have been originally a receipt wherever it was available.

Q. Well, you can't find any such receipt now; is that correct?

A. Well, I didn't take the time to go one by one on the receipts, sir.

Q. Please do.

A. Okay. We are looking for you for a receipt for a car rental, for a car, for gasoline?



Q. You cited to me as parking and gasoline for a [119] trip outside the Miami area It's listed on your expense sheet in the amount of $30.25.

A. Okay. There's one gasoline bill right here. It's in Miami area Then there's a second one, yes. Both of them are in the Miami area

Q. Where is the parking receipt?

A. The parking receipt, here, sir. Sheraton Brickell in Miami.

Q. So those were for trips in Miami?

A. Yes.

Q. How about for the month of March 1989?

A. Let's go to the next page, I suppose.

Q. I don't believe it's covered in that document, sir. Do you have any recollection of any trips to any ships outside of Miami area during that month?

A. No, sir, I don't.

Q. I'm sorry, if you look at the last page of exhibit D, I believe it does cover expenses for March of 1989.

A. The very last page?

Q. Yes, sir.

A. Okay, trip to Germany.

Q. Dated April 11. This page.

A. Okay, yes.

Q. Now, this indicates that you went to Germany, [120] correct?

A. That is correct, sir.

Q. And you went by a plane?

A. I went by plane, yes.

Q. And how long were you there?

A. Well, let me see the dates. From the 14th of March and returning ten days. To the 24th, I suppose.

Q. Did you visit any ships belonging to Chandris while you were in Germany?

A. Yes, I visited the new construction, the Horizon, being built in the shipyard.

Q. Well, that was not yet a ship was it? It was under construction, correct?

A. It was a ship under construction yes.

Q. But it was not on the water, it was in the shipyard?

A. It was in the shipyard, correct.

Q. It had never sailed, had it?

A. No.

Q. Aside from that, had you visited any other ships that are indicated on this expense sheet?

A. No. We visited the people that did the specifications for the Galileo.

Q. How about the month of April 1989, did you visit any ships during that month?

[121] I'm just asking for your recollection now, Mr. Latsis. I don't think it's in that document.



A. The month of April, again all the ships that were in Miami, the Miami area, an occasional visit to San Juan for the Amerikanis, the Azure, or the Victoria, as before. I don't have any bills here that I see.

Q. Okay.

A. I don't know if I have any at all that were given to the Chandris.

MR. BRADY: I ask that exhibit F be received in evidence. It's a copy of a check dated June 8, 1989, with various expenses and receipts attached thereto.

THE COURT: Mr. Rosenberg?

MR. ROSENBERG: No objection, your Honor.

THE COURT: Exhibit F will be received.

(Defendants' Exhibit F received in evidence)

MR. BRADY: Thank you.

THE COURT: Mr. Brady, why don't you just take all the originals so you don't have to keep walking back and forth.

MR. BRADY: Okay.

Q. Mr. Latsis, I'd like to refer you to the second page of exhibit F.

A. Yes.

Q. Do you recognize that document?

[122] A. Yes, sir, I do.

Q. Isn't that also a traveling expenses document prepared by yourself?

A. Yes, it is.

Q. Does that reflect trips to any ships in particular?

A. Yes, it reflects trips to the Galileo in the Port of Miami.

Q. Can you show me where that's reflected, sir?

A. That's reflected by means of the dinner that was served with Mr. Katsourakis. Mr. Katsourakis was the architect that designed the conversion, and I was in charge of taking him around on the ship and staying with him through the evening and discussing and having dinner with him.

Q. But on the document itself all that's reflected is dinner, correct?

A. Correct, but that reminds me of what the circumstances were.

Q. And that was the, which ship was that?

A. The Galileo in particular he converted.

Q. And that was while she was in port, correct?

A. When she was in port. And also I remember that we went to the Britanis because they were planning some light conversion on her, too.

[123] Q. Is that the same day?

A. No, it was a different day that the Britanis was called into port.

Q. So that's two days, correct?

A. That was at leasts two days, yes. That's what this reflects.



Q. Thank you.

I'd like to refer your attention now to May of 1989. Do you recall how many times you went aboard ships in May of 1989?

A. By heart, no, sir.

Q. I'd like to refer your attention to exhibit G, which is a copy of a check dated June 22, 1989, with various documents attached.

THE COURT: Mr. Rosenberg?

MR. ROSENBERG: No objection, your Honor.

THE COURT: Exhibit G will be received.

(Defendants' Exhibit g received in evidence)

MR. BRADY: Thank you.

Q. Now, the second page of this exhibit is a another expense reimbursements sheet prepared by you, correct?

A. Yes.

Q. And it's dated June 11, 1989?

A. Yes, it does.

Q. And it's signed by you, correct?

[124] A. That is correct, sir.

Q. And this indicates a trip to Baltimore from Miami, correct?

A. Yes, it does, sir.

Q. And this is in regard to the trip on the cruise to nowhere and a subsequent cruise to Bermuda in May of 1989?

A. That is correct, sir, yes.

Q. And aside from what you have already testified to about the two-day cruise to nowhere which preceded the trip to Bermuda, are there any other trips to ships identified on this expense sheet?

A. No, there isn't.

Q. There's also attached as, I believe, the last sheet of this document, exhibit G, a hotel bill in Baltimore, correct; a copy of a hotel bill from Baltimore?

A. Yes.

Q. Was that your hotel bill there?

A. If it's only one room, but there are two rooms here, I see.

Q. Well, actually I believe the last three sheets are three separate bills from the same hotel for the same evening, correct?

A. Yes.

Q. And those were for Mr. S. Amara, Mr. Ley, and [125] yourself?

A. Yes. They used my card, my gold card that I have with the hotel –

Q. Okay.

A. – to obtain a better rate.

Q. Do you know who Trident Marine is?

A. Trident Marine is a company that does, among other things, some fire protection inspections routine for



the ships, and from time to time they did some other work like quote evaporators and other equipment for the ships.

Q. And did you review these bills before you paid them?

A. I reviewed them, yes.

Q. And are they accurate to the best of your knowledge?

A. Yes. As far as I can discern, yes, they are accurate.

Q. Now, subsequent to this trip, you had surgery in Bermuda, correct?

A. Yes, sir.

Q. And you returned to New York directly from Bermuda to your home, approximately May 22 of 1989?

A. That is correct.

Q. And you stayed there, by your testimony, about six weeks?

[126] A. About six weeks, yes.

Q. And you were not working at that time, is that correct?

A. I was not, no.

Q. You next went back to your office in Miami in July?

A. In July.

Q. And approximately how many times did you visit ships in July of 1989?

A. I recall I stayed in Miami the first month, approximately, the balance of July, and then I came to New York because there was some minor emergencies both with the Galileo and the Amerikanis.

MR. BRADY: I offer into evidence Defendants' Exhibit I, being a copy of a check dated August 16, 1989, and various documents attached thereto.

MR. ROSENBERG: No objection.

THE COURT: Exhibit I will be received.

(Defendants' Exhibit I received in evidence)

Q. Mr. Latsis, I hand you a copy of exhibit I.

A. Thank you.

Q. Would you please examine the second page of exhibit I.

A. Yes, sir.

Q. That again is an expense reimbursement sheet [127] prepared by you, correct?

A. That is correct, sir.

Q. And it's titled "Expenses, July 1989"?

A. Yes.

Q. Correct?

A. Yes.

Q. Now, how many times did you visit ships outside of Miami, according to this document?



A. It looks like several.

Q. Well, can we be a little more specific, sir? Isn't it actually five?

A. Well, I have to group them, sir. I didn't – did you do that?

Q. Well, I'm asking you for your testimony.

A. But I have to look at the way I did it. I have to look at the dates, and if it's the same weekend we had the Amerikanis and the Galileo calling Saturday and Sunday. So I have to group them together before I answer you.

Q. Let's go line-by-line then.

A. Okay.

Q. The first line is transportation to and from Miami Airport on –

THE COURT: Why don't you let him see if he can group it and maybe that will move it along.

A. Okay. Amerikanis, Galileo, it looks like one [128] weekend here. One visit to two different days.

7/21st is another grouping, the Galileo and Amerikanis, Galileo on Saturday.

Q. Excuse me, sir. Are you referring to weekend of July 21, July 24?

A. Yes, that's another two days.

Q. Well, it says there, after "transportation to/from," Galileo, correct?

A. Yes.

Q. There's no entry for the Amerikanis that weekend, is there?

A. No, I don't see mention of Amerikanis, no.

Q. No, neither do I.

How about the weekend of the 28th?

A. That has mention of both ships.

Q. Okay. So, in total, that's five trips to ships in the Port of New York, correct?

A. Five days, yes.

Q. All right. And when it says the third line down there, "Transportation to Amerikanis, $35," could you explain to me what that is, please?

A. Okay. When I came to New York, because I had my own vehicles, I did not rent a car.

Q. Okay.

A. But my vehicle cost me totals and so on and so [129] forth, so I charged them a nominal fee of mileage from Rye to and from the pier.

Q. From Rye to and from the pier?

A. Yes.

Q. Does that include a parking fee as well?

A. No, does not include parking because we parked in the first level and we don't pay anything.

Q. There was free parking, okay.

Was there any indication that you sailed aboard any of these ships during the month of July 1989?



A. From this I cannot tell. The only one could be suspect is the Galileo.

Q. Which Galileo entry, sir?

A. There's only one Galileo, and I didn't visit – it's very unusual that I did not visit the Amerikanis the next day. So the only thing would be like I sailed with the Galileo and I came back the next weekend, and then I attended the Galileo that day in port and the Amerikanis the next day.

Q. Except that you indicate transportation to and from LaGuardia on July 21, which was a Friday, correct? And again on the following Monday, so it would have been difficult for you to go back to the airport if you were aboard the ship, wouldn't it?

A. Yeah. Yeah. I'm thinking if I came back from [130] Bermuda and I went to LaGuardia. But, you know, I can't tell definitely from this.

Q. But there is a taxi receipt attached, isn't there, from a trip from Rye to LaGuardia on July 4, 1989?

If you look at the receipts attached, one from Rye Brook Taxi?

A. For what date is that?

Q. July 24, 1989?

A. Okay. But which way? Returning, perhaps.

Q. From Rye to LaGuardia?

A. From Rye to LaGuardia, returning trip.

Q. So that would be on Monday going back to Miami?

A. On the 24th, yes.

Q. Let's move now to August of 1989. Do you have any independent recollection of how many times you visited ships during that month?

A. I believe every weekend.

Q. Where would those visits have taken place?

A. In the Port of New York.

Q. So how did it come you were visiting the ships now in the Port of New York instead of Miami every week?

A. Because the ships were sailing out of the Port of New York to Bermuda, both of them.

Q. Were there any ships calling in Miami at that time?

[131] A. Yes, I was attending also the Britanis on Fridays in Miami before I left to come to New York.

Q. I see. What time would that be?

A. That would be from 7 o'clock in the morning as she arrived, 8:00, depending on what I was doing at 7:00, until she sailed at 4:30.

Q. And then you catch a flight to New York?

A. Then I catch a 5, 6 o'clock flight to New York, and then the next morning I attend the early ship.

Q. And I'd like you to turn your attention to exhibit J, which is a copy of a check dated October 5, 1989, and various documents attached thereto.



MR. BRADY: Ask that it be received in evidence.

MR. ROSENBERG: No objection.

THE COURT: Exhibit J will be received.

(Defendants' Exhibit J received in evidence)

Q. If you turn to the second page of exhibit J, Mr. Latsis?

A. Yes, sir.

Q. That's another one of the expense sheets that you prepared for reimbursement, correct?

A. That is correct, sir.

Q. And that's covering the period of August 1989?

A. That is correct.

Q. And this identifies, by my count, four one-day [132] visits to ships in the Port of New York?

A. Are you referring to the fact that I visited the two ships in the same day each time?

Q. Well –

A. There are four different visits to New York, yes.

Q. August 5 and August 6?

A. That's two different dates.

Q. Right?

A. In one trip.

Q. That's two. There's one on August 11 to the S/S Amerikanis?

A. Uh-huh.

Q. And there's one on August 21 to the S/S Galileo, correct?

A. Correct. The next day I went.

Q. That's five. And then there's August 25, one to the S/S Amerikanis again?

A. Yes. There the reason I referred to it like this is because when I visited New York, I charge one or the other of the ships. I didn't charge both of the ships, because this was notice intended as a log of visiting the ships.

Q. I'm afraid I don't understand you. Weren't the ships in port on different dates?

A. They were.

[133] Q. One was in on Saturday and one was on Sunday?

A. One on Sunday. So when I visited New York from Miami, I had the airfare ticket, a ticket – I had a taxi to to my home and return to the airport. I visited both ships at two different dates, and I didn't necessarily on this expense sheet put both ships in every time.

Q. But on prior expense sheets, you did put both ships in?

A. Some occasions I did. There was no format to this. This was not intended as a log of visiting the ships.

Q. So then what you're saying is we can't really tell how many times you attended vessels from these documents at all?



A. It is entirely possible, yes, that there were more if they were in the same port –

Q. And it's also possible –

A. – on the same date or something on the sail date.

Q. It's also possible that there weren't more?

A. We would know there were ships in port because they were scheduled, sir.

Q. And we also know you attended on the dates that appear on the documents?

A. This is also correct.

Q. And we don't know about the other dates?

[134] A. You could be sure of the other days, sir, because they would not pay my return ticket to see one ship or the other.

Q. You don't have any documentation that would indicate those visits that don't appear on your expense sheets, do you?

A. No.

MR. ROSENBERG: Your Honor, please, we have gone over this.

MR. BRADY: That was for a different month, your Honor.

THE COURT: I'm not sure we have actually asked this question. I think the witness has already answered it.

Q. Did you do any sailings aboard these ships, Mr. Latsis, during the month of August? Can you tell from reviewing the exhibit J?

A. From this sheet it does appear so, sir, that I can tell from this log, from this expense sheet.

Q. It does not appear that you did sail?

A. I cannot be sure.

Q. Do you have any independent recollection of having sailed at that time?

A. No.

Q. Let's move on, then, to September of 1989. Do you recall independently any visits to ships during that [135] month?

A. No, except the very last day. If it was the weekend, a Labor Day weekend, it could be. I don't recall before I went on vacation.

MR. BRADY: I will offer in evidence Defendants' Exhibit K, which is the usual copy of the check. This one is dated November 7, 1989, with various documents behind it.

MR. ROSENBERG: No objection.

THE COURT: Exhibit K will be received.

(Defendants' Exhibit K received in evidence)

MR. BRADY: Thank you.

Q. I believe, if you take a look at the second page of exhibit K, Mr. Latsis?



A. Yes, sir.

Q. You will see a another expense sheet?

A. Yes, sir.

MR. ROSENBERG: Second page?

MR. BRADY: The second page.

Q. And it's entitled "Expenses for September 1989"?

A. That is correct.

Q. And what does that indicate about your visits to ships during that month?

A. That I went to the S/S Galileo on the 2nd of September, arrived in New York, I visited the Galileo, and then I went on to Athens sometime in the beginning of this [136] month, the 7th, I believe, transportation to JFK.

Q. And that trip was vacation, was it not?

A. That was vacation, with the exception of one week that I visited the manufacturers of the cabins, the architects and –

Q. You did not visit any ships during that period in Athens?

A. There were no ships in Piraievs at that time.

Q. And then the 30th, the next to the last line, indicates that you traveled to Philadelphia on the 30th to visit the Galileo, correct?

A. I visited, boarded the Galileo, and sailed with her.

Q. And that's when the Galileo sailed trans-Atlantic to Bremerrhave for conversion, correct?

A. Correct.

Q. How long a trip was that?

A. That was about a 14-day trip.

Q. 14 days. So you would have arrived in Bremerhaven on approximately October 13?

A. October 13, 14, I don't recall.

Q. And the dry docking or the conversion of the Galileo, this was a major project, correct?

A. Very big project, yes.

Q. Can you tell me approximately what the total [137] expense of that project was?

A. $65 million.

Q. And when she came out of the conversion, she wasn't the same ship, was she?

A. She was definitely not the same ship.

Q. In fact, she had a different name?

A. She had a different name as well.

Q. She was now the Meridian. The Galileo no longer existed?

A. That is correct.

Q. When did you return from Germany?



A. I sailed back to the Galileo for trials and shakedown cruises, they call it in the industry, to Fort Lauderdale at the beginning of March. I don't remember if it was the 10th or 13th or something.

Q. Isn't it true you were in Germany until approximately March 14?

A. Yes.

Q. Okay, so –

A. It was the 14th?

Q. I'm just trying to clarify.

So then you sailed from Germany on March 14th back to Fort Lauderdale?

A. That's correct.

Q. Would that have been another 14-day trip?

[138] A. That would be another 14-day trip.

Q. So you would have arrived in Fort Lauderdale around –

A. The end of March.

Q. The end of March?

Aside from your – well, as you previously testified, during that time you were spending all your time with the conversions, so you weren't visiting any other ships then?

A. That is correct.

Q. Upon your return to Fort Lauderdale, what were your duties then?

A. My duties was to stay with the ship until she was passed with the Coast Guard inspections.

Q. The Meridian?

A. The Meridian, yes. She was totally commissioned and ready to sail as a seaworthy vessel with regard to full certificates and testing of all the equipment.

Q. And I believe you previously described another week of dry docking in Norfolk thereafter?

A. Unfortunately, they discovered that one of the propellers had a problem.

Q. When was that?

A. Well, during the passage we entangled one with the ropes.

[139] Q. Allow me to withdraw that question and clarify it. I meant when was the dry docking?

A. Oh, the dry docking insued about a week and a half after the arrival in Fort Lauderdale.

Q. So that would have been early to mid April already?

A. Early April, 14th, I think, of April. Of course, something like this –

Q. And she was in dry dock a week, I believe you said, earlier?

A. She was about a week.

Q. So she came out again in mid April?

A. Mid April.



Q. And how long were you with the vessel after that before she received her commissioning from the Coast Guard?

A. I sailed back the vessel to Fort Lauderrdale and following.

Q. How long a trip was that?

A. Two and a half days, three days, something like this.

Q. When was the ship finally commissioned by the Coast Guard?

A. Exactly two weeks after we sailed from Miami, we went to Norfolk two and a half days, dry docked for a week, and two and a half days back. So altogether coming to about [140] 12, 13 days.

Q. She was dry docked through – got back, I'm sorry?

A. No.

Q. Let me withdraw the question. I believe I mis-spoke.

A. I didn't mean the dry docking.

Q. So she was finally commissioned, then, when she returned back to Miami from the dry docking in Norfolk; is that correct?

A. Yes, sir.

Q. And at what point did you resume your normal duties with the company post-conversion?

A. Immediately after that, the next morning I went to the office.

Q. You went to the office in Miami?

A. Yes.

Q. That would have been approximately late April?

A. Middle of April, I believe.

Q. So now I call your attention then to May of 1990 when the conversion is completed and you are back to your normal routine, correct?

A. Yes.

Q. Do you recall how many trips you made to vessels in May of 1990?

[141] A. Yes. I started out with, as I recall, could be more, with the Horizon being inspected at the beginning of May for 12 days in the Port of New York.

Q. Now, the inspection took 12 days?

A. No, the arrival to sailing is 12 days. The inspection – we started out with a Coast Guard inspection, took two or three days, the manufacturer's checklist. Then, subsequent to that, all the Department of Public Health, and then the inspection of the ships – different items that they observed during the crossing over from Germany on her maiden voyage, things were corrected and repaired by the shipyard personnel.

Q. And this ship is the new ship?

A. Is the brand-new ship, yes.



Q. This is a completely new building?

A. Correct.

Q. And isn't it true that she was a new ship and of a new class for the company?

A. Yes, sir.

Q. And that during that 12 days in the Port of New York, the company was holding parties aboard the ship every day to entertain travel agents and promote the ship for future business?

A. The parties, I'm not certain. What I was certain is they had an open house continuously with food. So agents [142] would come, take a tour of the ship, prescribed tour, and then they will eat something and leave.

Q. And that was going on for the 12-day period?

A. For the most of it. Well, no, you couldn't get anybody on board until the Coast Guard passed the inspection.

Q. Which was, as you said, two or three days?

A. No, four days usually.

Q. All right. Aside from those trips, aside from that time spent with the Horizon in New York, in May were you visiting any other ships during that month?

A. Well, then I returned back to Miami and –

Q. When would that have been?

A. I think – I don't remember the days exactly, but –

Q. Well, roughly.

A. After the 13th or 14th of May when she sailed, I think I returned back to Miami and –

Q. Well, I'm sorry to interrupt. Isn't it true that she only arrived in New York around the 14th of May and stayed until the 26th?

A. I don't remember the dates by heart. I may be wrong.

Q. Let me see if I have something here that can refresh your recollection.

[143] MR. BRADY: I would like to offer into evidence exhibit N, which is a copy of a check dated August 15, 1990, and various documents attached thereto.

THE COURT: Mr. Rosenberg?

MR. ROSENBERG: No objection.

THE COURT: N will be received.

(Defendants' Exhibit N received in evidence)

MR. BRADY: Thank you.

THE WITNESS: Thank you.

Q. Now, Mr. Latsis, there are a couple of longer sheets attached to this exhibit, I believe, and the second of those is an expense sheet for the period May 1 to May 31, 1990; is that correct?

A. Yes, it is, sir.

Q. And does that refresh your recollection as to what dates the Horizon was in Port of New York?

A. Yes, 5/14; for the next 12 days after 5/14, yes.



Q. It says in the second entry on the left under "date" being 5/14/to 5/26; is that correct?

A. That's correct, yes.

Q. And it would appear from examining that document that you returned to Miami on the 28th, correct, JFK from Rye?

A. Yes. May 28, right.

Q. And there are no indications on that document, [144] aside from the May 14 to May 26 item, of any visits to ships outside of Miami, are there?

A. Outside of Miami, no.

Q. And after you returned then in June of 1990, you resume your normal activities in the office, or from the office?

A. Yes, sir.

Q. And do you recall if there were any trips to ships outside of the Miami area in June of 1990?

A. Not readily.

Q. May I refer you to the other longer sheet that's attached to exhibit N.

MR. ROSENBERG: N, as in Nancy?

MR. BRADY: N, as in Nancy.

Q. Which I believe is your expense sheet covering the period June 1 to June 30, 1990?

A. Yes, sir.

Q. Does that indicate any trips to any vessels outside of the Miami area?

A. Yes, to New York.

Q. And that's on June 29, correct?

A. No, 6/15. June 15.

Q. Well, it indicates a trip to New York, but I don't see any indication of a trip to a vessel.

A. I beg your pardon. When you come to New York, [145] that's what I was coming for mostly.

Q. Well, can you please indicate to me, then, where it indicates the tolls and parking for the trip to the vessel the weekend of June 15?

A. Tolls and parking.

Q. The mileage charts that you stated that you put in for when you travel from Rye to the vessel, that you recall?

A. Yes. I don't have one charge here, but I have taxi.

Q. Well, you took a taxi? Is there a taxi receipt for that day?

A. Yes, you see it right there? It says taxi/limo, whatever it says there.

Q. For June 15?

A. For June 15, $62, yes.

Q. But that's from the airport in Miami to New York, LaGuardia Isn't that the trip from the airport to your house, sir?



A. Yes, that's correct. Yes.

Q. Well, that's not to the ship, then?

A. No, but –

Q. I'm asking you if there's any indication on this –

A. No, it doesn't say. No, sir, does not say [146] anything here about the ship, no.

Q. And you returned from New York to Miami on the 18th of June, correct?

A. Yes.

Q. So then it's not necessarily true that every weekend you came to New York you went to see a ship, did you?

A. If I –

MR. ROSENBERG: Objection.

A. Yes.

MR. ROSENBERG: Wait. Wait until the judge rules.

Argumentative.

THE COURT: Well, no, I think he is allowed to ask that in light of the answers to his questions.

Overruled.

THE WITNESS: Okay, so should I answer?

THE COURT: Yes, sir, if you're able to answer, please do. And if you need the question read back, please let us know.

THE WITNESS: No, I understood the question.

A. As you see on top, this form has the charge to the Horizon.

Q. Yes.

A. The company will not allow me to go on my weekend [147] home and charge this to the Horizon, sir. It has to be an expense definitely attributed to a visit to the vessel, and the major vessel here was the Horizon.

Q. I see. Thank you. So that brings us up to July of 1990.

In July of 1990, how many trips did you make to ships outside the Miami area?

A. I can't readily recall, but I know that I took three trips with the Horizon.

Q. In July of 1990?

A. I don't know if it was all in July. It was July and August. I remember that much.

Q. Three trips to the Horizon?

A. With the Horizon.

Q. With the Horizon.

From where to where, sir?

A. From New York to Bermuda, and in one occasion I returned with the Meridian, which was also taking the same trip one day later or earlier, I don't recall. But there were definitely three trips in the summer of 1990 that I took from New York to Bermuda.



MR. BRADY: Well, let me offer into evidence exhibit M. It's a copy of a check dated October 11, 1990, with various documents attached thereto.

MR. ROSENBERG: No objection.

[148] THE COURT: Exhibit M will be received.

(Defendants' Exhibit M received in evidence)

MR. BRADY: Thank you.

Q. Now, the first of the longer sheets attached thereto, which I believe is the third page, second page?

A. Yes.

Q. Is an expense sheet submitted by you for a period July 1 to July 31 of 1990, correct?

A. That's correct, sir.

Q. And on the first entry is July 13, transportation ride to LaGuardia?

A. That's correct.

Q. That's returning from your house to the airport to return to Miami, correct?

A. Transportation ride to LaGuardia, yes.

Q. July 14 is transportation to and from vessel?

A. To and from vessel, yes.

Q. Where would that have been?

A. In the Port of New York.

Q. So the first indication, then, was an error, that the trip was from LaGuardia to Rye?

A. It's reverse. It's reverse.

Q. And the last entry on this is July 19, taxi to St. George, correct?

A. Yes.

[149] Q. What was that? Can you explain that to us, please?

A. Yes, that means that this particular month I took at least one trip that I can see here, one of the vessels. I went to Bermuda with a vessel. I see the Horizon charge on top. It must be the Horizon. And then I charged here transportation from the one vessel to the other from St. George to the Meridian.

Q. All right.

A. By taxi.

Q. The Meridan was in St. George?

A. The Meridian or to Somerset. But I took a taxi from St. George.

Q. I mean – I am sorry – it should have said to St. George?

A. Probably. I returned to the Meridian to this ship because sometimes I went by ferry boat.

Q. So both the Horizon and Meridian at this time were sailing to Bermuda from the Port of New York?

A. Correct.

Q. On seven-day roundtrip cruises?

A. That's correct.



Q. And your testimony is what, how did you get to Hamilton?

A. The Horizon originally was going to Hamilton for [150] three days. From Hamilton, you would go to Somerset, where the Meridian is, by ferry boat, which was offered as a service by the company. So, of course, ourselves and the passenger could take that trip.

By that time, the Horizon shifted to St. George, which is the other end of the island.

Q. Right.

A. Quite a distance. And there was no ferry boat connecting these two ships any longer, so you had to take land transportation.

Q. So you took a taxi from there?

A. From Somerset to St. George.

Q. And in St. George you joined which ship?

A. The Horizon again.

Q. Where did she go from there?

A. She returned to New York.

Q. And when would she have returned to New York, what day?

A. The 19th, if that was the last day she was going to be in St. George?

A. I would guess it would be the day before, because she was sailing early in the morning. If she sailed on the 20th, two days later she would be back in New York.

Q. So she was back in New York July 22?

A. That is correct.

[151] Q. There's no indication of a return to the airport or from the ship to your house on July 22?

A. There is none, no.

Q. Can you explain that?

A. I could have been given a ride by the port captain.

Q. The port captain to where?

A. The Port of New York.

Q. To where?

A. To my home or to the train.

Q. Well, I want you to tell me, sir. I don't know. I wasn't there.

A. I don't recall, sir.

Q. You don't recall?

A. No.

Q. And was there a point during July when you returned to Miami?

A. From what –

Q. Well, I'm asking your recollection.

A. It must have been, yes.

Q. It must have been. Is there any evidence on here of how you returned to Miami?



A. No.

Q. There's no taxi fare going back to the airport in Miami, is there?

[152] A. No, there's not.

Q. Going back to LaGuardia?

A. No.

Q. How about in August of 1990, do you have any recollection of attending ships in August of 1990 outside of Miami?

A. Well, now I'm looking at the sheet, sir. My recollection –

Q. That's the other sheet attached to the same exhibit, yes.

A. I see there's attendance charge – I don't remember by heart the dates.

Q. Okay, that's fine.

A. Excuse me, you know, if I don't recall three or four years back.

Q. That's perfectly understandable. I just wanted to start there to see what you do remember.

A. On August 8, it was an attendance transportation in New York, and that's again the Horizon. And obviously I took another trip, because there's also transcription in St. George.

Q. Well, transportation to H?

A. To and from St. George, it says there.

Q. I'm sorry, it looks to me like it reads transportation from H to St. George on the second line.

[153] A. From Horizon to St. George, yes.

Q. Or could be from Hamilton to St. George?

A. Yeah, could be Hamilton. H, yeah.

Q. And then the next entry is August 24, transportation from LaGuardia?

A. Then there's transportation from LaGuardia, yes.

Q. Which indicates a trip from Miami back to home; is that correct?

A. That is correct.

Q. And August 25, you attended a ship again in the Port of New York?

A. Yes.

Q. So that's two attendances in the Port of New York, and you believe a sailing to Bermuda?

A. No, I believe it's definitely if I have a receipt from Bermuda, sir.

Q. You have a taxi receipt that you were in Bermuda, yes, but it doesn't indicate whether you sailed both directions or only one direction?

A. No, it does not.

Q. And the last entry in the July expense sheet indicates that you were back in New York, I believe, from our discussion, you were back in New York about July 22, correct, returning from Bermuda, by your testimony?



A. On the previous sheet, yes.

[154] Q. Right. And the first entry in August was attendance, August 4?

A. That's correct.

Q. And that's coming from your home in Rye, isn't it?

A. That's correct.

Q. And there's no indication that you went back to Miami in the interim between July 22 and beginning of August?

A. No.

Q. Was that vacations time?

A. I don't remember. It could have been a trip, too.

Q. Could have been a trip. There's no indication –

A. On board of one of the ships.

Q. There's indication of that on the documentation, is there?

A. No, it's not.

Q. What about September of 1990?

A. September 1990?

Q. Do you recall attending any ships outside the Miami area at that time?

A. Not readily, no.

Q. How about October of 1990, do you have any recollection about attending ships then?

[155] A. October dry dock, must have dry docked the ship. Not with dates and everything, I cannot tell you.

Q. Well, let's back up, then, and I would like to show you an exhibit O, which is a copy dated November 2, 1990, various documents attached thereto.

THE COURT: Mr. Rosenberg?

MR. ROSENBERG: No objection.

THE COURT: Exhibit O will be received.

(Defendants' Exhibit O received in evidence)

Q. Now, again, there's a long form expense sheet attached to exhibit O, correct?

A. That is correct.

Q. And it's covering the period of September 1990?

A. That is correct, sir.

Q. And if I'm correct, it indicates an attendance aboard a ship apparently in the Port of New York on September 1 of 1990?

A. Correct.

Q. And again on September 29 of 1990?

A. September 29, yes.

Q. Okay. And no others, correct?

A. Several others.

Q. Well, please show me where they are.

A. 21.



Q. September 4 is Rye back to LaGuardia Airport, [156] right?

A. Right.

Q. And September 4 also is?

A. LaGuardia Airport.

Q. Airport to residence, so you're back at Miami.

On September 21, residence to Miami airport, taxi fare?

A. Yes.

Q. And on September 22, LaGuardia Airport to Rye, New York. That's back to your home, correct?

A. Yes.

Q. And on the 29th, transportation for attendance, $30. That's the usual indication for a visit in the Port of New York, correct?

A. But there's a week lag in between there.

Q. Wherein there's no indication of any trips?

A. 21st – not on this sheet, but –

Q. Well, you arrived back in Miami on September 4, and on September 21, you go back to your home. There's no indication that you went from your home to the ship before the 29th, is there?

A. I'd like to repeat what I told you before, that I could not charge the company expenses that were relating to my visiting my home, sir. The expenses I could charge, I could get away with in that company was only where I had to [157] attend a ship the next day.

Q. Fine.

A. I'm sorry. And that's why it's charged to the ship on top. This was for the internal accounting system.

Q. On September 22, you went from LaGuardia to your home in Rye?

A. Correct.

Q. And there's no indication of traveling from Rye to the ship before the 29th?

A. There's nothing that I charged them, no.

Q. You would have gone from the ship, from your home to the ship and not charged them, wouldn't that be a reimbursable expense?

A. Yes, but it is a possibility that I charged – I did not charge it.

Q. Uh-huh.

A. I don't remember readily now to tell you. But whatever is chargeable to the ship, it is charged for the ship.

Q. Let's say that you're right, that you did go on the ship on September, that would have been the 23rd, the next day after you got back to New York?

A. Yes.

Q. Why would you have had to travel to the ship on the 29th for attendance?

[158] A. Because one scenario is that when one ship came back from a trip, the next day was the other ship.



Q. But you were already there. If you were on a seven-day roundtrip cruise to Bermuda that left on September 23, you wouldn't be back until September 30, would you?

A. September 29, 9 days. September 29, yes.

Q. September 22 you came into the LaGuardia Airport from Miami and went to your house in Rye?

A. Right.

Q. You didn't go to a ship that day?

A. No, I did not from what it looks like here.

Q. You're speculating that perhaps you went on a ship on September 23rd; that's not indicated on here, correct?

A. That's not indicated on here, that's correct.

Q. And if you had been on that ship, it was a seven-day cruise to Bermuda, correct?

A. Yes.

Q. And the ship would not have been back in New York until September 30, correct?

A. Yes, but sometimes I did not –

Q. So you could not have attended a ship.

MR. ROSENBERG: Your Honor, please, may the witness be permitted to answer?

THE COURT: Stop. The court reporter can't take [159] it down if all of us are talking at the same time.

Let's let the witness answer and then start with a question. Have you finished your answer, sir?

THE WITNESS: No, ma'am.

THE COURT: Would you please do so?

A. I was about to explain that sometimes we took a trip and we were not allowed to stay the whole roundtrip if there was an urgency. So we were asked to fly back either to Miami or to New York – it happened several times – and attend another vessel.

Q. And in that case –

A. That could be. I'm not saying that it is. But when you don't see several intervals of seven days, that happened. In fact, I was asked to return from Bermuda on occasion directly to Miami.

Q. Yes, on that case, if you had been asked to return from Bermuda to Miami, there would be some indication of travel back to New York, wouldn't there?

MR. ROSENBERG: New York?

THE COURT: Miami.

Q. He said he went to Miami.

A. I said on occasion I was asked to directly either to return to New York or to return to Miami, depending on what the urgency was.

Q. I understand.

[160] A. So it was not complete seven-day intervals.

Q. Fine. So if you had gotten off the ship from September 23 and September 29 in Bermuda and gone



back to Miami, then there would be some indication you came back to New York before you attended the ship on the 29th, wouldn't there?

A. That's a correct observation, yes.

Q. And there is no such indication on this document, is there?

A. No, there's not.

Q. Thank you.

Let's turn our attention now to October of 1990.

MR. BRADY: I'd like to offer into evidence exhibit Q, which is a copy of the check dated December 31, 1990, and various documents attached thereto.

MR. ROSENBERG: No objection.

THE COURT: Q will be received.

(Defendants' Exhibit Q received in evidence)

THE COURT: Question, sir?

Q. I refer your attention, Mr. Latsis, to the long sheet attached, first long sheet attached, which is again an expense report prepared by you covering the period of October 1990, correct?

A. That is correct.

Q. And that indicates trips to ships on October 6, [161] October 13 and October 27, correct?

A. The 6th I see, yes, the 13th, visit to the vessel, transportation, yes, 26th.

Q. 27th, I believe?

A. 27, yes. 26th is to the airport. 27th is to the ship.

Q. Right.

A. 27th I stayed and went to the New York office.

Q. And there's no indications that you are sailing on any of those ships; is that correct?

A. Not in this log, not in this expense account, no.

Q. And then in November of 1990, the last month of your employment with Chandris, did you make any trips to ships outside the Miami area?

A. I don't recall, but I know that on the 22nd I came back to New York.

Q. 22nd of November?

A. Yeah, to stay.

Q. That was the end of your employment there?

A. Yes. Without an expense account, you know, copy, which I don't have, I don't recall if I made the trip. I know I attended all the ships that was in Fort Lauderdale.

Q. I'm talking about outside Miami.

A. I don't recall.

Q. You don't recall?

[162] A. It could have been one more trip, but I'm not sure.

Q. When you came back to New York on the 22nd of November, that was not in connection with a visit to a ship?



A. 22nd of November, no.

Q. Now, I'd like to go back over your testimony about May 14 of 1989.

MR. ROSENBERG: May we approach, your Honor?

(At side bar)

MR. ROSENBERG: I would like to take a five-minute minute break.

THE COURT: Go ahead. Keep on going.

(In open court)

THE COURT: Proceed, please.

Q. I believe you testified that you first noticed a problem with your eye at about noontime that day?

A. About noontime, yes.

Q. The vessel was still in port at that time, wasn't it?

A. She was, yes.

Q. Did you have any pain at that time?

A. No pain, sir.

Q. Did you seek medical attention at that time?

A. No, I did not.

Q. You didn't go see Dr. Gonzalez?

[163] A. No, I did not.

Q. Did you know Dr. Gonzalez before you got on the ship?

A. I had met him in passing.

Q. Okay.

A. But not know him per se.

Q. In your duties attending the ships when they were in port, did you have occasion to come into contact with the ship's physicians on other ships at other times?

A. Regularly it was not required for my visits on board, but they came to the captain's office, to the chief engineer's to submit reports, so I saw from the insignia on the lapel on their shoulders.

Q. Did you know anything about Dr. Gonzalez' medical qualifications at that time?

A. No, sir.

Q. And I believe that you testified that you had no out-of-pocket expenses in connection with this incident; is that correct?

A. That is correct.

Q. And you lost no earnings while you were recuperating?

A. That is also correct.

Q. Now, in regard to the income you made the year after you left Chandris, I believe your testimony today was [164] that you made, was it $39,000, $39,874 in 1991?

A. Yes, sir.

Q. And do you recall being asked at your deposition what your income was in 1991?



A. I said about roughly about 70,000, I recall.

Q. You do recall being asked the question?

A. Yes, I do.

Q. I'd like to refer to page 119 of the deposition transcript, line 24, going to page 120, line 3, ask you if you recall being asked this question and giving this answer.

MR. ROSENBERG: Starting?

MR. BRADY: Line 24, at the bottom of 119.

Q. "Q. Can you tell me, then, what your yearly income was for 1991?

"A. 1991, the gross was 123,000, I think, and after expenses something like 79."

Do you recall being asked that question and giving that answer?

A. I was asked the question. I don't remember that I told you 12. I don't recall now. I thought I told you about 70 as income mixed between the corporation and the other one.

Q. Well, you did have a chance to read the transcript after the deposition was taken?

A. Yes. I don't recall the exact number I gave you [165] back.

Q. I'm asking you now. Do you have any reason to believe that what's printed here in the transcript wasn't what was said on that day?

A. No, it was reviewed and it's correct. If it's in the transcript, that's correct.

THE COURT: Gentlemen, let's try to be careful to speak one at a time. It's late in the day. The court reporter has worked very hard with that. Give her a break.

Q. Mr. Latsis, your consulting business that you're working in now, do you do the same kind of work now that you did for Chandris, generally?

A. Part of the work I do now is similar to what I did for Chandris. Some other part, I would say 50 percent, is not.

Q. And in what way is it different?

A. It's different that I inspect ships for purchase, write extensive reports, I review records of ships in different specifications, I do surveys for other classifications as though I was surveyor from the site of the classification.

Q. Okay. Anything else?

A. And some part is what I was doing for Chandris, conversions, repairs for the independent owners.

Q. And the estimates that you gave earlier about the [166] value of the benefits that you had received while you were at Chandris that you are not receiving now, those are your estimates, correct?

A. They are, yes.



Q. Now, when you went back to Chandris after the operation in July of 1989, did you make any complaints to Mr. Kapparis, Kaparis?

A. Yes, Kaparis.

Q. About your treatment or about your eye?

A. No, I didn't see any point to it.

Q. Well, I'm just asking you whether you did it or not.

A. No, I did not.

Q. And did you have occasion to see Dr. Gonzalez thereafter?

A. I met with Dr. Gonzalez again when we were traveling for Germany.

Q. Isn't it true that Dr. Gonzalez was with you in Germany for the entire time of the conversion?

A. That is so.

Q. And that he was the doctor assigned to that project?

A. Correct.

Q. And did you ever make any complaints to Dr. Gonzalez about his treatment of you while you were in [167] Germany?

A. No, I did not.

Q. At any other time?

A. No.

Q. And it's true, isn't it, that Dr. Gonzalez is not a defendant here?

A. No, that's not, as far as I know, is he?

Q. Did you ever sue the man anywhere else? Have you ever brought another lawsuit against Dr. Gonzalez?

A. No, I have not.

MR. BRADY: Thank you. No further questions.

THE COURT: Mr. Rosenberg, redirect, sir, if any?

MR. ROSENBERG: I'll be very brief, your Honor.

THE COURT: Terrific.

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REDIRECT EXAMINATION

BY MR. ROSENBERG:

Q. Your estimates of gross income, sir, that were given in your deposition, did you take into account expenses when you ascertained gross income?

A. No, the way I gave that estimate was totally unprepared. I didn't expect the question. I remember 123 from my corporate total gross that I had given my accountant about, and I said that number and I quickly estimated it would be 70, but unfortunately it was not.

Q. The expenses associated with procuring that 15, [168] $123,000 in income, what were the expenses like?



A. Oh, nearly 115,000.

Q. What did they consist of?

A. They consisted of first purchasing the equipment we furnished to the Maritime Administration ships; second, hiring subcontractors to install and put into operation; and also I had two or three other consultants that I was cooperating with in obtaining appropriate equipment and testing it to the satisfaction of the administration.

Q. You were asked about whether you had any voiced any complaints with respect to the care that was afforded to you in connection with your eye treatment or consultation or visit of Dr. Gonzalez. Did any of the company officials ever bring that to your attention and ask you about it?

A. Would you repeat the question?

Q. Did any of the company officials that were referred to by Mr. Brady bring to your attention the visit to Dr. Gonzalez before your visit to the hospital in Bermuda?

A. They did not.

Q. With respect to the attitude of these officers of the company, did it change at all after your surgery?

A. It definitely did.

Q. In what respect?

A. I felt that they were – I was distanced from [169] them. Before the operation, they behaved as though there was a lot of projects for me in the company. They had big plans. I was named the head of –

MR. BRADY: Objection, your Honor. This is outside the scope of the cross-examination.

MR. ROSENBERG: Precisely on point, your Honor.

THE COURT: Approach, please.

(At side bar)

THE COURT: How is the attitude within the scope of the cross?

MR. ROSENBERG: He asked conversation – I want to complete the –

THE COURT: Wait. Wait. One at a time.

MR. ROSENBERG: Communication. In other words, he asked if there were spoken words with respect to this issue. I want to know whether there were other means of communication that were conveyed to Mr. Latsis. Mr. Brady asked if he made any complaints to them.

MR. BRADY: I didn't ask anything about what they said to him.

MR. ROSENBERG: It's a two-way communication.

MR. BRADY: No, it's not. The question is whether or not the man made any complaints to his employer, if there was complaint before the suit of improper treatment, and the answer was there wasn't. It has nothing [170] to do with their attitude toward him.

THE COURT: I really think it is beyond the scope.



MR. ROSENBERG: May I have permission, then, to go into this issue then >

THE COURT: No. Go ahead and finish up your redirect, please.

(In open court)

THE COURT: Ladies and gentlemen, the answer which you heard in response to the last question will be stricken from the record and will not constitute evidence for your consideration.

Q. The invoices that are, if they call them that, attached to which expense vouchers that constitute the exhibits that you have been questioned about, letters Q, O, M, N, K, J, I, G, F and D, were these designed to account for your activities with respect to visiting the various company vessels?

A. No, they were not, sir.

Q. What was the purpose of these?

A. Whenever I incurred out-of-pocket expenses that the company felt that they were justified, I was supposed to submit them in a format originally of my own. They didn't have a form. Eventually, they formalized this to their own – to suit their own accounting system.

[171] Q. Did the company keep an account of your visits to the vessel as far as you know?

A. As far as I know, no.

Q. And did you keep such an account?

A. No, I did not.

Q. Was it necessary in terms of performing your job as far as you were concerned?

A. It was not required. I kept only small reports of my visits, and if there were any conclusions, which there were, I kept them in a file in their office, which I left behind, because it was their property.

Q. At the time of your training, you indicated in direct examination in Merchant Marine training you were issued licenses, various kinds of licenses?

A. Correct.

Q. Do you keep those licenses current?

A. No, I have not, but in Greece the licenses are, as long as you have your health and you can submit to a physical examination of preboarding the ship, they are for lifetime.

Q. Have you preboarded and submitted to examinations with respect to those licenses since –

A. I did not make a use of any of the licenses since I left the Merchant Marine.

Q. That was many years ago?

[172] A. That was 1967.

Q. Thank you.

MR. ROSENBERG: No further questions.

MR. BRADY: No recross.

THE COURT: Any recross?

MR. BRADY: None, your Honor.



THE COURT: Thank you, Mr. Latsis. You may step down, sir.

(Witness excused)

THE COURT: How long is the deposition going to take, sir? Is that what you had in mind next?

MR. ROSENBERG: Yes, your Honor.

THE COURT: How long will that take, sir?

MR. ROSENBERG: I think maybe we can do it by 4:30, a little less. Do you want to defer that until tomorrow morning when we're all fresh, especially the reporter?

THE COURT: Off the record, please.

(A discussion was had at side bar off the record)

(In open court)

THE COURT: Ladies and gentlemen, in order, we hope, to shorten the process, the lawyers are going to go home tonight and shorten everything so that they have less deposition to read to you tomorrow. For that reason, we are going to let you go now.

[173] Would you be kind enough to come in tomorrow morning to be here ready to roll at 10 o'clock, as I'm sure the lawyers and their witnesses will be.

I caution you again: Please don't discuss the case with anyone else. Have a nice evening. I don't think you're going to get rained on.

(Adjourned at 4:05 p.m., until 10:00 a.m. on Wednesday, June 9, 1993)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANTONIOS LATSIS,

Plaintiff,

-against-

CHANDRIS, INC., CHANDRIS, S.A. and TRANSOCEANIC SHIPPING CO., LTD.,

Defendants.

91 Civ. 6900 (LMM)

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**TRANSCRIPT OF PROCEEDINGS**
**TESTIMONY OF DEMETRIOS KAPARIS**

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[286] * * *

MR BRADY: At this time, you Honor, the defendants call Mr. Demetrios Kaparis to the stand.

DEMETRIOS KAPARIS,

called as a witness by the defendants, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BRADY:

[287] Q. What is your occupation?

A. I am a senior vice-president and head of the technical department and technical operations of the Celebrity Cruises.

Q. What are your duties as director of technical operations?



A. I supervise entirely all maintenance, repairs, dry dockings, specifications and normal performance of our cruise ships. I rebuild, reconstruct and convert existing ships and I design and follow up the construction of new buildings and new superliners.

Q. How long have you been working for Celebrity Cruises, Inc.?

A. Since January 1993.

Q. Prior to January 1993, what was your occupation?

A. Exactly the same.

Q. Who were you working for then?

A. For Chandris, Inc.

Q. Can you tell us the relationship between Chandris, Inc. and Celebrity Cruises, Inc.?

A. Celebrity Cruises took over all the operations of Chandris, Inc.

Q. What were your duties for Chandris, Inc.?

A. What my duties are?

Q. Yes.

[288] A. Exactly the same as Celebrity Cruises.

Q. How long did you work for Chandris, Inc. before January 1993?

A. 33 years.

Q. What degrees do you hold?

A. I hold a Bachelor of Science of naval architecture, Bachelor of Science of naval engineering, and marine engineering, diploma of industrial administration from Manchester University from England. I have honor scholarship for 2 years to obtain a Ph.D. at MIT but I have never executed it, and I represent my company in the cruise industry in all conferences in Washington, in the United States Coast Guard headquarters, and also in the United States Public Health and Sanitation.

Q. Have you ever testified previously?

A. I never been. This is my first time.

THE COURT: Welcome.

Q. I would like to ask you some questions about the plaintiff in this case. Do you know Antonio Latsis?

A. Yes, I do.

Q. When did you first meet him?

A. In 1988 in Miami.

Q. About what time in 1988, do you recall?

A. I think it was spring 1988.

Q. How did you happen to meet him at that time?

[289] A. The senior vice-president of finance, Mr. Kapatanoukos, brought him in my office in Miami.

Q. What purpose was that meeting for?

A. In order to interview him for a job in my department.

Q. What was the result of that interview?



A. He was appointed as a consultant at the beginning and then he start working in my department from January 1989.

Q. What did you hire Mr. Latsis to do?

A. He was hired as a superintendent engineer but with a specific work to be done and supervise the electronic systems of our ships. And also to upgrade the computerized systems and the computerized communication between the ships and our office.

Q. Where did you hire him?

A. In Miami.

Q. Where was he expected to work?

A. In the Miami office.

Q. Did he have his own office there in Miami?

A. Yes, next to my office in my department.

Q. Where did Mr. Latsis live while he worked for you?

A. In New York.

Q. Aside from New York, what was he doing, do you [290] know, for accommodations in Miami?

A. He has rented an apartment.

Q. How far away was that apartment from the office, if you recall?

A. About two and a half miles.

Q. Do you know how he got back and forth between his apartment and the office?

A. By car leased by the company to Mr. Latsis.

Q. How many superintendent engineers were in your department in 1989?

A. Five. Two in Miami and three in Greece.

Q. In addition to the superintendent engineers and yourself, what other personnel are in the technical operations department of Chandris, Inc. at that time?

A. Two secretaries.

Q. Any other technical personnel?

A. In the Miami office, no.

Q. I mean in Chandris, Inc.

A. Yes, of course. All the engineering department of its ships and the masters of the ships reported to me for technical matters.

Q. How many licensed engineers were carried aboard passenger ships in 1989?

A. Depending on the size of the ship, between 12 and 14.

[291] Q. And how many ships were you supervising at that time?

A. Six.

Q. How many of those shipboard engineering personnel had offices in the Miami complex?

A. None.

Q. What type of ships were these?



A. All passenger cruising ships.

Q. What ports would those ships customarily call in?

A. New York, Boston, Philadelphia, Baltimore, Charleston, Wilmington, Miami, and San Juan,* Puerto Rico.

Q. How often were those ships in their home port in 1989?

A. Approximately about 7 days and occasionally every 2 or 5 days.

Q. When you say approximately, you mean approximately every seventh day?

A. Yes.

Q. How long would a ship typically be in port when it came in?

A. Depending on the itinerary between 9 and 14 hours.

Q. What kinds of maintenance problems arose with those ships in the course of your supervision of them?

A. We faced engineering problems, electrical [292] problems, plumbing problems and anything in relation to the technical and technical operations on the ships.

Q. How would you handle those problems when they arose?

A. I have appointed for each ship a superintendent engineer which is completely responsible and he is reporting to me direct.

Q. What would be the procedure if there was a problem with a ship that was assigned to one of those superintendent engineers?

A. First of all, the engineering department of the ships headed by the chief engineer is attending to the problem and if it is necessary I will have to send one of my superintendent engineers on board the ship.

Q. In that system that you had in 1989, how many ships were assigned to Mr. Latsis?

A. None.

Q. Why was that?

A. Because he was taking care of the electronic systems of the ships.

Q. And that was covering the whole fleet rather that one individual ship, is that correct?

A. Yes, sir.

Q. Approximately how often did it occur that it was necessary to send a superintendent to the vessel?

[293] A. During 1989 rarely.

Q. And if that happened what days of the week would such visits usually occur on?

A. Usually the ships are in port, we call home port, Friday, Saturday, Sunday, and Monday.

Q. And so that is when those visits would take place?

A. Yes, sir.



Q. At the vessel's home port?

A. Yes.

Q. What were Mr. Latsis' duties in the office during the week?

A. During the week he was taking care of all the electronic equipment of the vessels, checking the accounts and together with me arranging for the repairs if it was necessary or improvements.

Q. And who did Mr. Latsis report to?

A. To me.

Q. How long do these visits to the ship when they occur, how long do they usually take?

A. If it is the ship in the vicinity of Miami, Port Everglades, or San Juan, Puerto Rico, every week I used to send the responsible engineer.

Q. How often, to the best of your recollection, in 1989 and '90 did you send Mr. Latsis to visit one of the [294] ships in Miami?

A. Very rarely.

Q. Can you recall any specific number of times?

A. I can't remember exactly how many times.

Q. Less often than the other superintendents or more?

A. Yes –

MR. ROSENBERG: Objection.

THE COURT: When the lawyers object we have to wait to see whether or not you will be permitted to answer the questions.

MR. ROSENBERG: The witness previously indicated he didn't remember.

THE COURT: We all know that he is entitled to see if he can refresh him. Overruled.

A. Can you repeat it please.

(Question read)

A. Far less often. Far less than the other superintendents.

Q. Did you make such visits yourself in 1989?

A. Yes.

Q. How often?

A. On the ships in Miami I always attended the ships in Port Everglades and every 2 weeks in San Juan.

[295] Q. Was it normal procedure for superintendent engineers to sail with the vessels in 1989?

A. Not at all.

Q. Was it possible that that could happen?

A. In case we have a problem on an emergency, yes.

Q. And do you recall in your recollection Mr. Latsis doing that?

A. Yes, sometimes he did.

Q. Do you recall how frequently that occurred?



A. Not very frequently.

Q. Were any records maintained of a superintendent engineer's visits to the vessels?

A. No.

Q. In your position as his immediate superior, were you in a position to know if a superintendent engineer visited one of the vessels in its home port?

MR. ROSENBERG: Objection, your Honor. That could be all encompassing. We don't know the basis of what his answer would be. Would he know by means of personal knowledge, hearsay statement, or a record?

THE COURT: We obviously don't know all the details but is there a reason why this question shouldn't be asked?

MR ROSENBERG: We should know the basis of the answer before we hear the answer.

[296] THE COURT: If the answer is he doesn't know we won't have a basis. Overruled. Are you able to answer?

A. Yes, I always did for its visits. All my assistant engineers do in the ships.

Q. In your estimate then what percentage of Mr. Latsis time while he worked for you was spent aboard ships?

MR. ROSENBERG: Objection to the form of the question.

MR. BRADY: It's a factual statement.

MR. ROSENBERG: In your estimate.

THE COURT: If you are able to speak with precision do so, otherwise estimate, sir. Overruled.

A. About 10 percent.

Q. I would like to call your attention now to May 14, 1989. Do you recall where you were on that date?

A. Yes, in the Port of Baltimore.

Q. What were you doing there?

A. I was on board the GALLILEO.

Q. What was your purpose in being aboard the GALLILEO?

A. As head of the technical department I have invited various shipyards from Europe to visit the GALLILEO and to show with my assistants exactly what we intend to do for conversion of the GALLILEO to the the MERIDIAN and also [297] to study with me various plans and answer their questions in order for me to decide in which shipyard will go for the conversion.

Q. Was anyone else with you at that time as part of your team?

A. Yes, Mr. Salvatore Amara who was directly responsible superintendent engineer for the GALLILEO, Mr. Antonios Latsis, and Mr. Waterly.

Q. Did you have any conversations with Mr. Latsis on that date?

A. You mean the 14th?



Q. Yes.

A. Yes, I asked for him in the morning and early in the afternoon but I could not find him and I met him on the departure on the bridge, when we departed from Baltimore on the way to Bermuda, about 5 p.m.

Q. What did you say to each other at that time?

A. That I was looking for him that morning, that we were very busy and I could not locate him.

Q. Did he say anything to you?

A. Yes, that he went ashore to telephone his wife for family reasons.

Q. Did you have occasion to speak to him later in the day?

A. Yes. I met him early in the evening about 7:30.

[298] Q. Did you have further conversation at that time?

A. Yes. He told me that with his team of the shipyard was doing very well but he is feeling rather having a little irritation in his eye.

Q. Did he say anything else at that time?

A. Yes, he thought that dust went into his eye when we were together in the bridge in the afternoon sailing from Baltimore.

Q. Did he discuss anything further about his eye with you at that time?

A. Not at that time.

Q. Did he mention Dr. Gonzalez?

A. No.

Q. What happened after that?

A. I met Mr. Latsis again about 9 o'clock in the restaurant that we all had dinner. He came rather late and he complained to me that shadows started interfering in his vision and that he must take it a little bit easier.

Q. Did you say anything to him?

A. Yes. I told him that it's better for him to rest and not to drink.

Q. What happened after that? What did he do after that?

A. After we finished the dinner I think he went to his cabin.

[299] Q. When did you next see him?

A. Next morning.

Q. Did you have a conversation with him then?

A. Yes. He told me that he had a peaceful night and that he is feeling quite well and will continue our work.

Q. And that was May 15 now?

A. Correct.

Q. Did you have any further conversations with him during the day on May 15?

A. Not until very late in the afternoon.

Q. What was the substance of that conversation?



A. We had a conference room that we had to exhibit our plans and he told me that he is rather concerned about the deterioration of his vision.

Q. Did you have any comment on that statement?

A. I told him as soon as we are in Bermuda we have to arrange with the best optician to see him and also that he must contact his doctor.

Q. When did the ship arrive in Bermuda?

A. As far as I remember about 11 o'clock at the pilot and alongside about 1:15, 1:30.

Q. For the jury sake, can you explain the difference between arriving at the pilots and arriving at the dock?

A. When we arrive to the island we have to stay outside and receive a pilot and then the pilot will guide [300] the captain and the officers through the channel or the narrows to the berth in that island.

In the case of Bermuda it's between two and a half to 2 hours from the distance from the pilot to the berth.

Q. What happened when you arrived at the dock?

A. Immediately I called the captain and the chief purser and I asked them to arrange with our agent, Mr. Latsis, to be taken ashore to give to him the best of their attendance and to take him to the best optician or to the best hospital in Bermuda.

Q. When did you next see Mr. Latsis after that discussion?

A. Later on that afternoon in the conference room he came and I stand up and I went to his direction and I

asked him what was the problem and he told me that he came to take his clothes but he has contacted his doctors in New York and probably he was going to be operated next Monday.

Q. Did you make any statement to him at that time?

A. That we will try to take the best possible care of him.

Q. What communication facilities were aboard that ship at that time?

A. At the time in the GALLILEO we had radio, telex, telefax, and satellite communication from shore to the ship.

[301] Q. Ship-to-shore phone?

A. Yes.

Q. Were those facilities working at that time?

A. Yes, sir.

Q. How do you know that?

A. Because all that morning a lot of telefaxes and telexes were exchanged between the various teams of the shipyards with the head offices in Europe.

Q. When did you next see Mr. Latsis after he got off the ship the last time?

A. During the night and during the morning through the medical team of the ship GALLILEO I was in contact for the progress of the operation and then in the afternoon about 4 p.m. I went to the hospital personally.



Q. What day was that?

A. That was on the 17th.

Q. Did you have a conversation with him at that time?

A. Mr. Latsis was just recovering from anesthesia and I think he understood that I was present and I stayed there until about 2 a.m.

Q. Did you have occasion to see him again in Bermuda after that?

A. Yes, of course. The ship sailed on the 18th at 5 o'clock and my agent took me personally to his room. The [302] agent and myself – the agent stayed with me about one hour and he left and then I stayed there until 1 o'clock in the morning and then I had to go to my hotel and catch the first flight to New York.

Q. Did you have any conversation with Mr. Latsis on May 18?

A. Yes. He told me that he was under pain, that he was a little restless and I also spoke with the doctors and the nurses of the hospital. I took cash for him if he needs it and he told me not to leave any money because he will use his cards but to make sure that all his expenses, hotels, doctors and hospitals are to be paid by us, and I did so prior to my departure.

Q. When did you next see him after Bermuda?

A. Sometime in July I think.

Q. Where was that?

A. In Miami.

Q. In the office?

A. Yes.

Q. Did you have any conversations with him between Bermuda and when he came back to the office?

A. Of course, very regularly.

Q. How were those conducted?

A. I was asking how is his condition and how he felt. He was very, very confident that the progress was [303] very satisfactory and he has never complained to me.

Q. Those were on the telephone, those conversations?

A. Of course, sir.

Q. After he came back to the office in 1989, did you have conversations with him then?

A. Yes, he stayed a few days and then as far as I remember he went for holidays in Greece.

Q. Did he make any complaint to you at any time about the treatment he received for his eye?

A. None.

Q. How long did he continue to work for Chandris after July 1989?

A. Until November 1990.



Q. And in that period of time how many complaints did he make to you about the treatment he received for his eye?

A. To me, none.

Q. And did there come a time when Mr. Latsis ceased to work for Chandris?

A. Can you repeat please.

Q. Did there come a time when Mr. Latsis was no longer working for Chandris?

A. Yes, after November '90.

Q. Do you remember how that came about?

A. Yes because our principal decided that –

[304] MR. ROSENBERG: Objection, your Honor. Principals decided he said, the content of that communication.

MR. BRADY: Again it's not submitted for the truth of what it contains but only for the fact that it occurred. There has to be some explanation of what happened.

MR. ROSENBERG: That might be true but I am not sure this witness is familiar with that directive.

THE COURT: You are not sure the witness is familiar with what?

MR. ROSENBERG: That directive. This is being elicited as the statements of another party, not the witness.

THE COURT: What about counsel's statements that these are not being submitted for the truth of those statements?

MR. ROSENBERG: Just that they occurred, I don't object on that basis as long as the jury is instructed these are not to be deemed truthful or they are not being offered for the truth.

THE COURT: The statements are coming in not for the truth of their content but otherwise.

Proceed, sir. Are you able to answer or do you need the question again?

[305] A. Can you please repeat.

Q. Tell me what you recall about how the termination of Mr. Latsis, his employment with Chandris, occurred.

A. Yes, I remember very well. I discussed the matter and I submitted it to the principals and the principals because of his performance, his personality, that he could not more or less communicate well with my assistants and to the fact mainly that he lived in New York they advised me to advise him that he has to stop employment with us.

MR. BRADY: No further questions.

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CROSS EXAMINATION
BY MR. ROSENBERG:

Q. Good afternoon, Mr. Kaparis.

Although you have never testified as a witness before, I take it that before appearing as a witness here today, you had discussions with the owners of the Celebrity Lines, formerly the Chandris Lines concerning your court appearance here today, is that true?

A. No, sir, I didn't.

Q. You never discussed this with the management of the company?

A. The management told me to attend and to tell the truth and the facts, which I did.

Q. Who did you discuss the truth and the facts with?

[306] A. With my lawyers. They asked me certain questions.

Q. Is he the only one you have discussed this matter with?

A. Yes, sir.

Q. And was there any written communication between you and the management of the company concerning what you observed and saw on the course of the voyage of the GALLILEO beginning on the 14th of May 1989 and terminating on the 16th?

A. No.

Q. No writings?

A. No writings.

Q. Did you generate any writings concerning Mr. Latsis and his eye problems?

A. No, I can't recollect, no.

Q. Are you familiar with the bridge log of that vessel as it was being prepared and as it evolved during the course of the voyage?

A. Can you repeat please the question.

Q. Are you familiar with the bridge log kept on the GALLILEO?

A. No, only I say only as far as I remember in my recollection.

Q. Do you remember seeing anything in the bridge log [307] concerning any treatment by Dr. Gonzalez of any patient or any passenger or crewman on that day?

A. No.

Q. Was any such treatment recorded in the log?

A. No, because this is not my duties. That is the master's duty.

Q. Did you look at that log?

A. Not at all, sir.

Q. You never saw that log?

A. No.

Q. Would it be a responsibility of the master of that vessel to record the fact that Dr. Gonzalez treated people on board that ship?



A. Yes, on a daily basis or twice a day, a report from the hospital goes to the master.

Q. And you know that Mr. Latsis, he told you he visited Dr. Gonzalez on board ship, am I correct?

A. Yes. Apparently Mr. Gonzalez told me that in the evening of the 15th that Mr. Latsis has visited him.

Q. The doctor informed you of that?

A. Yes, in the afternoon accidentally he saw him about 11 o'clock at night.

Q. And that confirmed that he had been in fact seen in the ship's hospital by Dr. Gonzalez?

A. Yes, because Gonzalez told me that Mr. Latsis – [308] usually when I walk around I ask the doctors if he has any problems or what he is doing and he told me exactly that evening that Mr. Latsis has visited him.

Q. What you told us before is that the hospital he is in charge of reports to the captain so they can include in the ship's log information concerning treatment of passengers and crewmen by the hospital, that's correct, is it not?

A. Yes, in writing.

Q. And it was the duty of the man in charge, Dr. Gonzalez, to report that to the captain, is that correct?

A. What I am telling you now is that the report, it comes from the department. There is no necessity for the doctor to report to the captain. The nurse takes the log book, what people visited the hospital.

Q. The nurse does that?

A. Yes.

Q. But the nurse works under Dr. Ganzalez's supervision?

A. Yes.

Q. There should be an entry in the log concerning the treatment of Mr. Latsis, am I correct?

A. Not necessarily.

Q. You indicated earlier that the hospital report should include that information, am I correct?

[309] A. Yes, but sometimes –

MR. BRADY: Hospital report?

MR. ROSENBERG: The hospital report included in the log, yes.

A. Yes, it is an emotional situation. It depends on the judgment of Dr. Gonzalez.

Q. Did you look at the abstract log in evidence in this case, Exhibit A in this this case?

MR. BRADY: Objection. He said he didn't see the log.

MR. ROSENBERG: That is different than in the course of the preparation.

A. I have not seen –

THE COURT: Wait, one at a time.

Have you finished your answer, sir?



THE WITNESS: I can't say what exactly it means because in my department it has nothing to do with the medical department. I am not responsible. I am responsible for the technical and specially that voyage I was very busy. I had 36 people to take care of.

MR. ROSENBERG: May I ask the witness be provided with Exhibit A, the log abstract?

THE COURT: I will hand it to him as we speak.

(Continued on next page)

[310] Q. Mr. Kaparis, I'm going to call your attention to the contents of exhibit A, the abstract of the ship's log of the Galileo. I'm going to ask you to turn to the 14th, the entries beginning on the 14th –

MR. BRADY: Objection.

Q. – of May.

MR. BRADY: Your Honor, I'm going to object on the basis that there's no foundation that witness has ever seen this document before. I thought that's what he was being shown it for.

THE COURT: Is that where we are going? I mean the document says what it says.

MR. ROSENBERG: Understood.

THE COURT: And he'll be able to argue that.

MR. ROSENBERG: Understood. I'm going to ask him a question after he's had an opportunity to look at it.

A. We are going to look, sir.

MR. ROSENBERG: He has familiarity with these types of documents.

MR. BRADY: But not this document necessarily.

THE COURT: First why don't you find out if you have ever seen this document.

Q. Did Mr. Brady show you this document before –

THE COURT: Have you ever seen this document?

THE WITNESS: No, sir. No, I have not seen this [311] document.

Q. You haven't seen it. Would you take a look at the entries that were compiled from the 14th through the 16th of May?

A. Yes, sir.

Q. Now, Mr. Kaparis, after reviewing that abstract of the log of the Galileo for that period in time, can you tell us whether you inspected it and found that there were reports from the hospital concerning treatment of passengers and crew?

MR. BRADY: Objection. I mean, this is cumulative, your Honor. The document speaks for itself.

THE COURT: The document is there.

MR. BRADY: This witness has nothing to add.

THE COURT: Is there any other question you're going to ask him?

MR. ROSENBERRG: Sure.



THE COURT: What is the question?

Q. Is there any reference in there to Dr. Gonzalez seeing Mr. Latsis?

THE COURT: Whatever it says, it says.

A. No.

Q. You earlier indicated to us that in response to one of my questions, that important matters are reported by the hospital to the captain for inclusion in the ship's log, [312] is that correct?

A. Correct.

Q. And I take it, then, that since there's no reports of Mr. Latsis' situation, it was not regarded as important, is that correct?

MR. BRADY: Objection.

THE COURT: Mr. Kaparis, stop.

THE WITNESS: Can I answer this question?

THE COURT: No, sir. No, sir.

MR. BRADY: Your Honor, is that asking for this witness' opinion as to whether it was important, or somebody else's opinion as to whether it was important? There's no foundation for that.

THE COURT: Mr. Kaparis, would you let us straighten this question out –

THE WITNESS: Yes.

THE COURT: – before you answer, sir? And I will tell you if you may answer, okay?

THE WITNESS: Okay.

THE COURT: Thank you.

Are you asking what the doctor might have said to this witness, if anything, or are you asking for the witness' evaluation?

MR. ROSENBERG: Well, the witness has indicated to us a familiarity with the standard for reporting.

[313] THE COURT: The witness testified that it was in the doctor's judgment. Why are we asking this witness?

MR. ROSENBERG: I take it from the shake of his head he concedes that.

THE COURT: Stop. Stop with the shake of the head. What is the next question?

MR. ROSENBERG: I withdraw the question.

THE COURT: Thank you, sir.

Q. Now, Mr. Kaparis, do you know that Dr. Gonzalez prepared a request for medical treatment concerning Mr. Latsis for transmittal to the health authorities or the physicians or hospitals in Bermuda, have you seen that?

A. No, I have not seen it.

MR. ROSENBERG: May I ask that the witness be presented with exhibit 5, your Honor?

THE COURT: 5 is being placed before the witness.



Q. Mr. Kaparis, are you familiar with this type of form? Have you seen it before?

A. Yes, I have seen it.

Q. And –

A. Not this particular. I have seen the type.

Q. Yes, just the form itself without the contents of this particular one.

There appears to have three signatures at the [314] foot above the double bar. Do you see that?

A. Yes.

Q. One of them has been identified as the signature of the master of the vessel?

A. The master.

Q. The ship's purser and Dr. Gonzalez?

A. And Dr. Gonzalez, yes.

Q. Is this usual and customary for the Chandris Line at that time to furnish this type of document for the medical care of the crew when they are embarked in port and require medical attention?

MR. BRADY: Objection. There's no foundation that this witness is in a position to know that, your Honor. He's not responsible for the medical personnel.

THE COURT: Do you want to try to see if there is a basis?

Q. Are you familiar with the use of that form?

A. Yes, I'm familiar, but this is not necessarily to be done for any person. This is done for Mr. Latsis, and this is for the reason for our agents to pay the expenses.

Q. Is that usual and customary when a seaman is injured on board ship, requires medical attention, that he be directed to land-based facilities for treatment?

A. Yes, because they have to pay all the expenses and take the best care. And this, in this instance, it was [315] necessary to do this in order for the agent to pay the expenses for Mr. Latsis personally and also for the master to take very good care of Mr. Latsis.

THE COURT: Ladies and gentlemen, you will recall that questions are not evidence.

Q. After Mr. Latsis returned from his convalescence following his hospitalization, he was on leave for a while, am I correct?

A. I believe it was about six weeks at home.

Q. And at the conclusion of that period of time, he came back to Miami and he worked for a time and embarked on a trip to Greece?

A. Yes, he flew to Greece.

Q. Flew to Greece. And while in Greece, did he attend to any of the business of the company with regard to the –

A. Yes, he worked for two days in my office and he met, on my instructions, some of the subcontractors.

Q. And that was for the major reconstruction of the Galileo?



A. Correct.

Q. And –

A. And he called me from my office. He sat in my office in my – in my desk in my office in Piraievs.

Q. In the Port of Piraievs –

[316] A. Yes. We had an office there.

Q. – outside of Athens?

And at the conclusion of the holiday that he was enjoying with his family in Greece, he came back to work in Miami, did he not?

A. Yes, for a while. And on the 30th of September, together we departed on the Galileo from Philadelphia to Germany.

Q. So that the ship was in Philadelphia when it started the voyage to Germany?

A. Because it was cruising to Philadelphia as I explained, from New York, Baltimore.

Q. And you and he accompanied the crew of the vessel and other officials?

A. No, it was nearly three-quarters of my technical department on board.

Q. And all of you travel to the facilities in Germany where the conversion took place?

A. Correct.

Q. And did Mr. Latsis have any role to play concerning that project?

A. Yes, he assisted me on the, mainly on the electronic and electrical systems, on the telephone installations, and also, if he was very busy, I advised him to do some inspections for me.

[317] Q. And this project was over a very extended period, it was a major reconstruction, am I correct?

A. Yes, correct.

Q. I think there was testimony this was a $65 million job?

A. Correct.

Q. And the ship was actually being made and renamed at the conclusion?

A. Yes, sir. I did all the specifications and the designing and rebuilt the ship.

Q. And did Mr. Latsis remain in the course of that job working on that ship throughout the conversion process?

A. Yes, he remained, except Christmas he came for vacation. And also I have arranged for him to live in an apartment in Bremerhaven. He did not remain on board, while I stayed every single day.

Q. And at the conclusion of that conversion, did he accompany the ship back to the United States?

A. Yes, together with me.

Q. And he testified that the ship was – there was a shakedown crew, I think he characterized it?

A. No, I was on board.



Q. Understood. But I mean that was the purpose of that voyage?

A. Yes.

[318] Q. To ascertain whether any repairs needed –

A. No, sir, I ascertained. I am responsible, and he was working for me, Mr. Latsis.

Q. And he carried out your directions concerning –

A. Anything at my direction, yes.

Q. And he testified that, thereafter, the ship traveled to Norfolk and was put up in dry dock in Norfolk?

A. No, he didn't testify. That was testified by the American Bureau of Shipping and by myself and my principals. He has nothing to do with that problem.

Q. No, no.

A. Yes, you said –

Q. No, he testified. He told this Court and jury that he participated in that aspect.

A. No, no, no.

Q. He wasn't there?

A. He was there, but the decision to go to dry dock was between myself, my principals and the American Bureau of Shipping.

Q. Mr. Kaparis, I didn't ask you about the –

THE COURT: Mr. Rosenberg, I don't think Mr. Kaparis was here during that testimony.

MR. ROSENBERG: No, no, no. Understood.

THE COURT: Why don't we forget about he testified this, he testified that. There's no way he can [319] know.

MR. ROSENBERG: Understood.

Q. In any event, he accompanied the ship to Norfolk when it went into dry dock?

A. Of course, because we had certain items on the electronic side, and we tried to complete them in dry docking.

Q. As your subordinate, he carried out your responsibilities in terms of the electronics at your direction, am I correct?

A. Correct.

Q. And did he do so in a satisfactory manner as far as you were concerned?

A. Yes. The only problem was sometimes was his personality contrasted with my assistant's.

Q. And did you ever have any report in writing concerning that?

A. No.

Q. Had you been advised that Mr. Latsis corresponded with the management of the company concerning his future with the company?

A. No, I have never been advised.



Q. And after the dry docking in Norfolk, there were repairs that were undertaken during the course of that dry docking, am I correct?

[320] A. Correct.

Q. And –

A. Hull repairs.

Q. The ship was again floated, was it?

A. Yes, after four days.

Q. Was it inspected by the Coast Guard authorities at that time?

A. By everybody, and also Admiral Sipes from U.S. headquarters.

Q. Did Mr. Latsis help you participate in that inspection?

A. Not particularly, because Mr. Latsis was busy with electronic, because the problem with the dry dock has nothing to do electronic. It was mainly a hull problem.

Q. And the electronics were important to the functioning of the ship, I take it; is that correct?

A. Of course, yes.

Q. Very important?

A. That's why I appointed Mr. Latsis.

Q. And incidentally, you indicated to us that even before the conversion the Galileo was well equipped in terms of communication, am I correct?

A. Correct.

Q. And you indicated that there was a telex aboard; is that correct?

A. Correct.

Q. That you had connections with satellite communication?

A. Correct.

Q. That you had the ability to –

THE COURT: Are we going to do this over again? We did this –

MR. ROSENBERG: Understood.

THE COURT: – ten minutes ago. The jury is awake. They are listening.

Q. Were those facilities that you testified to –

A. Yes.

Q. – available for use in 1989 and May of 1989?

A. Yes.

Q. On May 14, 15 and 16 of 1989, were any of them undertaken for use to communicate with any physicians on land concerning the course of treatment that should be provided to Mr. Latsis regarding an emergency medical condition with his right eye, was that communication used in any way in that connection?

MR. BRADY: I'm objecting to the form of the question, your Honor.



THE COURT: You know better. Do it again.

Q. Did Dr. Gonzalez take advantage of the opportunity to use those communication facilities?

[322] A. Sir, I don't know. This was the responsibility of the master and Dr. Gonzalez.

Q. You don't know if any such communication –

A. No, sir.

Q. – was undertaken? You have never been advised of any, I take it?

A. No, sir.

Q. When did you last see Dr. Gonzalez?

A. Gonzalez, I saw him a few months ago on board the Zenith.

Q. And did you tell Mr. Gonzalez that you were going to testify in this case – Dr. Gonzalez, excuse me – Dr. Gonzalez that you were to testify in this case?

A. No, he came to me and told me that he is coming to the court case.

Q. He told you he was going to testify in this case?

A. Yes. Yes.

Q. Did he discuss with you what he had found on his examination of Mr. Latsis on board the ship in May of 1989?

A. Sir, I'm a very busy man. When I last saw him, Dr. Gonzalez, I only saw him for two minutes. I cannot discuss. He told me he's going to attend the court case, that's all.

Q. Did you ever discuss with him at any time –

A. No. No.

[323] Q. – between May 14 and the present time –

A. No, May 14 –

THE COURT: Mr. Kaparis, it's very difficult for the court reporter to take it down when two people are talking.

THE WITNESS: Okay.

THE COURT: Would you be kind enough to let counsel finish his question and then answer, please.

Q. I'll start again, okay? At any time between May 14, 1989 and today, did Dr. Gonzalez ever discuss with you his findings of the examination he conducted of Mr. Latsis on board the Galileo on that day?

A. No, sir.

MR. ROSENBERG: I have no further questions.

THE COURT: Thank you, sir. Redirect?

MR. BRADY: No, your Honor.

THE COURT: Thank you. Mr. Kaparis, you may step down, sir.

(Witness excused)

THE COURT: Ladies and gentlemen, I think this is a nice time for ten minutes to stretch and do what we need to do. See you then.

(Jury leaves courtroom)

(Recess)

[324] (In open court; jury not present)



THE COURT: Mr. Brady, do I hear this right?

MR. BRADY: My apologies, your Honor, yes.

THE COURT: You let the doctor go?

MR. BRADY: I let him go this morning. I didn't anticipate that this afternoon would move so efficiently.

THE COURT: All right. Let's let the jury go home.

(Jury enters courtroom)

THE COURT: Ladies and gentlemen, I think we have good news and good news. The good news – well, the bad news, from our point of view, is that counsel has run out of witnesses for the day. The good news for you is you get to go home. The good news also, I think, is that this will not affect our estimate that we will be concluded by Friday.

So the net net is you get a little time off this afternoon. Would you be kind enough to be back 10 o'clock tomorrow morning as promptly as you were today, please?

Good evening. Counsel apologizes for running out of witnesses.

(Jury leaves courtroom)

(Adjourned at 3:30 p.m., until 10:00 a.m. on Thursday, June 7, 1993)

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CHANDRIS

CHANDRIS CRUISE LINES

s.s. "GALILEO" V6/89

PLAINTIFF'S EXHIBIT 5

Blumberg No. 6199

DR. MARCH
1430/16-05-89

KEMH.
ADMITTED PM/16-05-89
FOR EYE OPERATION.
@ KEMH.

TO:

MEYER AGENCY
35 CHURCH ST.
HAMILTON, BERMUDA

DATE. 14TH MAY 1989

## REQUEST FOR MEDICAL TREATMENT

PHYSICIANS ARE KINDLY REQUESTED TO COMPLETE THIS FORM IN A CLEAR MANNER

NAME OF CREW MEMBER: LATSIS (SURNAME) ANTONIOS (CHRISTIAN NAME) POSITION SUPT. ENGINEER

REQUESTED. X-RAY [ ] YES [XXX] NO BLOOD TEST: [ ] YES [XXX] NO URINANALYIS TEST [ ] YES [XXX] NO

SHIP'S DOCTOR'S REMARKS: RULE OUT DETECTED RETINA PLEASE

MEDICAL DOCTOR: PLEASE EXAMINE THIS CREW MEMBER AND PROVIDE THE REQUESTED RESULTS IF X-RAY IS REQUESTED, DELIVERED THE X-RAY WITH THE READING TO THE CREW MEMBER TODAY OTHER TESTS SHOULD BE MADE AVAILABLE TO THE SHIP'S DOCTOR ON THE NEXT CALL IN PORT

EXPENSES FOR EYE-GLASSES, HEARING AIDS, CORSETS, ETC ARE TO BE PAID BY THE CREW MEMBER TO YOU. ONLY ABOVE REQUESTS WILL BE PAID BY CHANDRIS CRUISE LINES

DENTIST: ONLY X-RAYS AND EXTRACTIONS WILL BE PAID BY CHANDRIS CRUISE LINES FOR ANY OTHER DENTAL WORK, PAYMENT MUST BE COLLECTED FROM THE CREW MEMBER BY YOU

| SIGNATURE OF MASTER | SIGNATURE OF CHIEF PURSER | SIGNATURE OF DOCTOR |
|---|---|---|
| CAPTAIN G. ANDRIANATOS | A. BELESSIOTIS | DR. V. GONZALEZ M.D. |

## PHYSICIAN'S REPORT ASHORE

DIAGNOSIS.....

X-RAY AND/OR LAB RESULTS:.....

PRESCRIPTIONS:.....
(IF SPECIAL MEDICINE REQUIRED, PLEASE PROVIDE TO CREW MEMBER

FURTHER RECOMMENDED TREATMENT:.....

DATE:..... 19.....
DOCTORS NAME AND ADDRESS DOCTOR'S SIGNATURE

1 COPY: DOCTOR ASHORE TO COMPLETE AND RETURN WITH CREW MEMBER TO SHIP
2 COPY: DOCTOR ASHORE TO COMPLETE AND RETURN WITH INVOICE TO ELLER & CO

208

**93-7704**

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**UNITED STATES COURT OF APPEALS**
**for the**
**SECOND CIRCUIT**

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ANTONIOS LATSIS,
Plaintiff-Appellant,

-against-

CHANDRIS, INC., CHANDRIS, S.A. and
TRANS OCEANIC SHIPPING CO., LTD.,
Defendants-Appellees.

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ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

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## EXCERPT FROM JOINT APPENDIX A303-A305 – JURY CHARGE

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[511] Now let's talk a bit about the specific claims that are presented here.

The plaintiff, Antonios Latsis, brings this action against the defendants under the Jones Act. The Jones Act provides in substance that every employer whose employees are members of the crew of a vessel in navigation shall be liable in damages for injuries sustained by the employee as a result, in whole or in part, of the negligence of any of the employer's officers, agents or employees or from any defect or deficiency, due to its negligence, in the vessel, its crew or its equipment.

Before you find the the defendants liable to plaintiff under the Jones Act, the plaintiff must prove by a preponderance of the evidence four elements:

[512] First, that the plaintiff was a member of the crew of a vessel, acting in the course of his employment; that is, that he was a seaman; two, that the defendants were, or one of them, were plaintiff's employer; three, that the defendants or an officer, employee or agent of one of them was negligent; and four, that such negligence played a part, no matter how slight, in bringing about the injury to the plaintiff.

Now, as to element number one, that is, that plaintiff was a seaman, regarding this first element, you may find that plaintiff was a seaman if you find by a preponderance of the evidence two things:

First, that plaintiff was either permanently assigned to the vessel or performed a substantial part of his work on the vessel. In determining whether Mr. Latsis performed a substantial part of his work on the vessel, you may not consider the period of time the Galileo was in drydock in Germany, because during that time period she was out of navigation. You may, however, consider the time spent sailing to and from Germany for the conversion. Also, on this first element of being a seaman, seamen do not include land-based workers.

The second thing required in proving seaman status is that plaintiff prove by a preponderance of the evidence that the capacity in which he was employed or the [513] duties he performed contributed to the function of the vessel or the accomplishment of the vessels' mission or to the operation or maintenance of the vessels during their



movements or while at anchor for the vessels' future trips.

The parties have agreed that the work of the plaintiff aboard these ships was a contribution to the functioning of the vessel and assisted in the accomplishment of its various missions.

So the parties have agreed that the second element involved in proving seaman status has been met.

In considering whether plaintiff has otherwise proved seaman status you should know that a vessel in this instance may be a single ship or a number of ships owned and operated by the employer.

If you find by a preponderance of the evidence that plaintiff was indeed a seaman, then you will go on to consider the other elements of the Jones Act claim.

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**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF NEW YORK**

| | |
|---|---|
| ANTONIOS LATSIS, | 91 CIVIL 6900 (LAP) |
| Plaintiff, | **JUDGMENT** |
| -against- | **U.S. DISTRICT COURT S.D. OF N.Y.** |
| CHANDRIS, INC., CHANDRIS, S.A. and TRANS OCEANIC SHIPPING CO., LTD., | (Filed Jun. 17, 1993) |
| Defendants. | |

A Jury Trial before the Honorable LORETTA A. PRESKA, United States District Judge, having begun on June 8, 1993, during the trial the Court having reserved decision of defendants' motion to dismiss, thereafter the trial having continued, and at the conclusion of the trial the jury having answered the attached "Verdict Form," and the jury in so doing having returned a verdict in favor of defendants, and the Court directing the complaint be dismissed, it is,

**ORDERED, ADJUDGED AND DECREED:** That the complaint be and it is hereby dismissed in its entirety.

DATED: NEW YORK, NEW YORK
June 14, 1993

JAMES M. PARKISON
Clerk
By: /s/ _____
Ronald A. Church
Deputy Clerk

**APPROVED:**
/s/ _____
Loretta A. Preska
U.S.D.J.



**VERDICT FORM**

1. Was Antonios Latsis a "seaman"?
   Yes _____ No X

If the answer to question number 1 is yes, continue on.

2. Were the defendants negligent in their treatment of plaintiff?
   Yes _____ No _____

If the answer to question number 2 is yes, continue on.

3. Was the defendants' negligence the proximate cause of plaintiff's injury?
   Yes _____ No _____

If the answer to question number 3 is yes, continue on.

4. If you have responded yes to all above questions then you must determine what damages, if any, plaintiff is entitled to.

   a. Compensation for lost earnings.
      Amount _____

   b. Compensation for past pain and suffering.
      Amount _____

   c. Compensation for future pain and suffering.
      Amount _____

5. Was plaintiff contributorily negligent in causing the injury?
   Yes _____ No _____

If the answer to question number 5 is yes, continue on.

6. Was plaintiff's negligence the proximate cause of his injury?
   Yes _____ No _____

If the answer to questions number 5 and 6 is yes, then answer question number 7. If the answer to either question number 5 or question number 6 is no, then return the verdict form.

7. What percentage of the entire injury was a result of plaintiff's contributory negligence?
   Percentage _____

8. Reduce the total amount of damages (4a+4b+4c) by the percentage of contributory negligence of plaintiff found in answer to question 7.
   Verdict for plaintiff in the sum of $ _____.

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 735 – August Term, 1993

(Argued December 6, 1993 Decided March 24, 1994

Docket No. 93-7704

Antonios Latsis,

Plaintiff-Appellant,

v.

Chandris, Inc., Chandris, S.A., Trans Oceanic Shipping Co., Ltd.,

Defendants-Appellees.

**UNITED STATES COURT OF APPEALS SECOND CIRCUIT**

(Filed Mar. 24, 1994)

**GEORGE LANGE III, CLERK**

Before OAKES, KEARSE and CARDAMONE, *Circuit Judges*.

Appeal from a judgment dismissing the complaint of Antonios Latsis who sought compensatory damages under the Jones Act for personal injuries he sustained while aboard a vessel in navigation. The jury found that Latsis was not a "seaman" and therefore returned a verdict in favor of defendants. We now hold that the jury instructions were erroneous and resulted in substantial prejudice to Latsis.

Remanded for retrial with jury instructions in accordance with this opinion. Judge Kearse dissents in a separate opinion.

Lewis Rosenberg, New York, NY
(Barry I. Levy, Shapiro, Shiff, Reilly, Rosenberg & Fox, of counsel), *for Plaintiff-Appellant.*

William J. Brady, III,
New York, NY
(Christ Stratakis, Poles, Tublin, Patestides & Stratakis, of counsel), *for Defendants-Appellees.*

OAKES, *Senior Circuit Judge:*

This case causes us to re-examine the definition of seaman as charged in Jones Act cases in light of two recent opinions of the Supreme Court: *McDermott Int'l Inc. v. Wilander*, 498 U.S. 337 (1991), and *Southwest Marine, Inc. v. Gizoni*, ___ U.S. ___, 112 S. Ct. 486 (1991) (explicating *Wilander*). Specifically, we must determine whether an "employment related connection to a vessel in navigation" must be substantial either in terms of the plaintiff's "permanent assignment to the vessel" or "performance of a substantial part of his work on the vessel." A subsidiary question is whether the district court properly instructed the jury that it could not consider the period of time a vessel was in drydock in determining whether the plaintiff performed "a substantial part of his work on the vessel." We find that, although *Wilander* overrules the "aid to navigation" element of *Salgado v. M.J. Rudolph Corp.*, 514 F.2d 750, 755 (2d Cir. 1975), the "more or less permanent connection" requirement articulated in *Salgado* remains the law of this circuit. In ignoring this



formulation and adopting an alternative formulation, the district court misapplied the law and committed plain error. This error resulted in substantial prejudice to Latsis because the jury was effectively instructed to determine the substantiality of Latsis's connection to the vessel solely on the basis of Latsis's temporal relationship with the vessel. This prejudice was compounded by the district court's further instruction that the time the vessel was in drydock could not be considered – an instruction that improperly served to limit the substantiality of Latsis's connection to the vessel in terms of Latsis's temporal relationship with the vessel. We vacate the judgment of the United States District Court for the Southern District of New York, Loretta Preska, *Judge*, and remand for a new trial.

## I. Background

### A. Facts

Antonios Latsis brought this action under the Jones Act for compensatory damages for personal injuries sustained by Latsis culminating in the loss of sight to his right eye. These injuries allegedly resulted from the negligence of the ship's doctor who failed to treat promptly Latsis's detached retina. Latsis alleges that he sustained these injuries while employed as a "seaman" aboard a cruise ship then known as the S.S. Galileo, one of a fleet of cruise ships owned and operated by appellees Chandris, Inc., Chandris, S.A. and Trans Oceanic Shipping Co., Ltd. (hereinafter "Chandris").

The injuries are said to have resulted from medical malpractice by the ship's doctor on May 14, 1989, a

Sunday on which the Galileo took on passengers at Baltimore, Maryland, for a regularly-scheduled, round trip cruise of five days to Bermuda. Around noon of that Sunday, while the vessel was still in port, Latsis, on board and assigned to the Galileo in his capacity as a supervising engineer for Chandris, began experiencing a central visual disturbance which seemed to originate in the bottom portion of his eye. As the day progressed the obstruction to his vision expanded. Latsis did not appreciate the significance of the problem until the time approached to sail in the late afternoon, when he sought medical guidance from an on board nurse who advised him to see the ship's doctor at once. He did so as the ship pulled from the dock in the port of Baltimore. Once in the ship hospital, he consulted Dr. Gonzalez, the physician employed by Chandris for this vessel. Dr. Gonzalez looked at Latsis's eye through an ophthalmoscope and said it appeared to him to be a detached retina. Gonzalez recommended that Latsis relax until he could see an eye specialist when they arrived two days later in Bermuda. Latsis received no further medical care until after the ship arrived in Bermuda, and no attempt was made to transport him ashore for prompt medical care by means of a pilot vessel, helicopter, or otherwise. During this interval, the impairment of his vision continued to intensify until all central vision in the eye was lost.

The malpractice allegations relate to the fact that Dr. Gonzalez, unlicensed in any state in the United States, neglected to follow the advice of a standard medical textbook which he had on board the vessel which read that " . . . any patient with a suspected or established retinal detachment should be seen on an emergency basis



by an ophthalmologist." When the vessel reached Bermuda, a doctor diagnosed his eye as having a massive detachment of the retina. The doctor recommended immediate hospitalization. After a consultation with Latsis's regular eye doctor in New York and another New York eye specialist, the doctors recommended surgical reattachment of the retina. Although Latsis underwent surgery, the end result was that he lost 75 percent of his central vision and can only see light on the sides of his right eye.

At the time Latsis presented himself for treatment in Bermuda, he was given a Chandris form signed by the ship's captain, chief purser, and Dr. Gonzalez, requesting medical attention be provided to Latsis for his "detected [sic, detached] retina" and describing Latsis as a "crew member" holding the "position" of "supt.engineer."

Evidence in the case indicated that Latsis, a naturalized American citizen of Greek ancestry, has had a lifelong involvement with the sea and shipping beginning with his entry into the Merchant Marine as a cadet in Germany following his graduation from high school, his sailing aboard a merchant ship as a second mate following successful completion of his studies and examinations, and finally with his being appointed captain of a small Mediterranean vessel. Thereafter, he became chief mate on a larger vessel. He came to the United States in 1967 and promptly became a United States citizen. He was employed in San Francisco with a firm of ship surveyors while continuing his education at the University of California at Berkeley. In 1973 he was awarded a Bachelor's Degree of Science and Mechanical Engineering from Berkeley and a year later received a Master's Degree

in Naval Architecture, working in the Maritime Industry during this time for the Pacific Marine Association in the ports of San Francisco and Oakland. After graduation he went to New York to work for the American Bureau of Shipping, and later for Southern Star Shipping Company as a superintendent and engineer. He supervised Southern Star's vessels' operations and maintenance for 11 years before becoming employed in 1989 by Chandris out of its Miami, Florida office.

Chandris operated a large fleet of merchant vessels, five of which sailed from Atlantic ports in the United States to the Caribbean, Bermuda, and Puerto Rico. For the first three months, Latsis was employed as a consultant and thereafter became a salaried employee. His duties were not confined to any single vessel but ran to the whole fleet. Latsis's duties included not only overseeing the vessels' engineers aboard ship and, hence, involved a number of voyages, but also planning and directing the maintenance at sea from the shore. While he necessarily familiarized himself with all of the vessels' power plants and engineering functions, he attended several hands-on repairs in a supervising capacity and monitored problems that the ships had or could develop. He was particularly in charge of the electronic equipment, both retrofit and existing equipment.

Latsis's work required him to travel with various ships in the fleet from time to time. The evidence here was conflicting as to how much time he was actually on board ship, Latsis himself testifying that he was on voyages 72 percent of his time and his immediate boss testifying it was more like 10 percent. Latsis maintained his family and residence in Rye, New York, although the



company provided him with housing and the use of a rental car in Miami because his office work was regularly there. The vessel on which he was sailing and with which he had more connection than any other vessel in the fleet was the 27-year-old S.S. Galileo, as it was then known, aboard which he had sailed from Miami to Mexico with specialists from Germany to plan for a conversion and upgrading scheduled to take place in Germany in the following year. He helped draw specifications to keep the older ship in repair while sailing on its cruise routes to Mexico and Nassau in the Bahamas. In fact, he had been on board the Galileo at the conclusion of a regular two-day cruise originating from and returning to Baltimore, having joined the ship there on Friday, March 12, two days before the scheduled trip to Bermuda during which his eye injury occurred as above stated. On the Baltimore-Bermuda trip, Latsis was responsible for escorting various shipyard personnel around the ship in connection with the upcoming conversion of the vessel. In fact, he was busy with these people after he first noticed the problem with the vision in his right eye at about noon on Sunday, May 14, up until the time of sailing when he finally went to see the ship's nurse who sent him to Dr. Gonzalez.

According to Demetrius Kaparis, who was a senior vice president of Chandris, Inc. and head of its technical department and technical operations before it was taken over by Celebrity Cruises, Inc., Latsis was hired on a regular basis as a superintendent/engineer with the specific work of supervising the electronic systems of their ships and also upgrading the computerized systems and the computerized communication between the ships and

the Chandris Miami office. The company had five superintendent/engineers, two in Miami and three in Greece, and all of the engineering department of the ships and masters of the ships reported to Kaparis for technical matters. The Chandris vessels, depending upon size, carried between 12 and 14 licensed engineers on board, and Kaparis supervised six vessels, all passenger cruising ships customarily calling in at New York, Boston, Philadelphia, Baltimore, Charleston, Wilmington, Miami, and San Juan. Usually, a vessel would be in home port about every seven days. Occasionally, depending on her itinerary, the ship would return to home port after a two or five day cruise. Vessels were usually in home port between 9 and 14 hours. Each ship had a superintendent/engineer, completely responsible, who reported to Kaparis directly. No vessels were assigned to Latsis "because he was taking care of the electronics systems of the ships." in other words, the whole fleet. Latsis reported to Kaparis.

Following Latsis's surgery and recuperation, lasting approximately six weeks, during which he received full pay, he resumed his duties in July, 1989, in Miami, and on September 30 sailed with the Galileo to Bremerhaven, Germany, where the vessel was placed in drydock. The conversion of the vessel was a $65 million job during the course of which the vessel's bottom plates and propeller were removed, the conversion being completed in March, 1990, and the vessel being renamed the Meridian. Latsis, who had been with the vessel the entire time it was in drydock in Bremerhaven, sailed back to the United States aboard the Meridian and continued to work for Chandris until November, 1990, at which time his employment



with Chandris terminated. Suit was filed in October, 1991. The district court had subject matter jurisdiction under 28 U.S.C § 1331 (1988), and 46 U.S.C. app. § 688 (1988).

### B. Proceedings Below

Trial lasted four days. In the charge to the jury, the judge told the jury that the plaintiff must prove, by a preponderance of the evidence, four elements, namely, that he was a member of the crew of a vessel acting in the course of his employment, that is, that he was a seaman; second, that the defendants were his employer; third, that the defendants or an officer, employee, or agent of one of them was negligent; and, fourth, that such negligence played a part in bringing about the injury to the plaintiff. As to the first element, the jury was told that it could find that the plaintiff was a seaman if the jury found, by a preponderance of the evidence, two things:

> First, the plaintiff was either permanently assigned to the vessel or performed a substantial part of his work on the vessel. In determining whether Mr. Latsis performed a substantial part of his work on the vessel, you may *not consider the period of time the Galileo was in drydock in Germany, because during that time period she was out of navigation.* You may, however, consider the time spent sailing to and from Germany for the conversion. Also, on this first element of being a seaman, seamen do not include land-based workers. (emphasis added).

The second element was stipulated to, and that was that plaintiff's capacity and duties performed "contributed to the function of the vessel or the accomplishment

of the vessels' mission or to the operation or maintenance of the vessels during their movements or while at anchor for the vessels' future trips." The court instructed that the second element involved in proving seaman status had been met, and that in considering whether plaintiff has otherwise proved seaman status, "you should know that a vessel in this instance may be a single ship or a number of ships owned and operated by the employer."

Latsis did not object to these instructions in their entirety. Latsis did object, however, to that portion of the charge that "explicitly takes from the jury's consideration the period of time that the Galileo was in drydock in Germany." The jury returned a verdict in favor of Chandris solely on the issue of Latsis's status as a "seaman" pursuant to the Jones Act. On June 17, 1993, the clerk entered a final judgment. On July 15, 1993, Latsis filed a timely notice of appeal. This court has jurisdiction pursuant to 28 U.S.C. § 1291 (1988).

We now hold that the jury instructions were an erroneous application of the law. We therefore remand the case for retrial with jury instructions in accordance with this opinion.

## II. Standard of Review

Normally, we will not consider a challenge to a jury charge if a party failed to object at trial. *See* Fed. R. Civ. P. 51 ("No party may assign as error the giving or the failure to give an instruction unless that party objects thereto before the jury retires to consider its verdict, stating distinctly the matter objected to and the grounds of the objection"). Thus, where "no timely objection was



made to the instruction or to the interrogatories in the district court . . . we may reverse on this ground only if 'the district court committed plain error in its charge and interrogatories.' " *Abou-Khadra v. Mahshie*, 4 F.3d 1071, 1078 (2d Cir. 1993) (footnote omitted) (quoting *Schaafsma v. Morin Vermont Corp.*, 802 F.2d 629, 636 (2d Cir. 1986)). An error is plain "if it results in a miscarriage of justice, or if it is an obvious instance of misapplied law." *Abou-Khadra*, 4 F.3d at 1078; *Air Et Chaleur, S.A. v. Janeway*, 757 F.2d 489, 493-94 (2d Cir. 1985). Although even a plain error will not warrant reversal if it is harmless, we will reverse where a plainly erroneous instruction misapplies the law as to a core issue in the case resulting in the substantial prejudice of the party challenging the instruction on appeal. *Schaafsma*, 802 F.2d at 637; *see* Fed. R. Civ. P. 61. Although Latsis objected to the drydock portion of the instruction, he failed to object to the instruction as a whole. We therefore review Latsis's claim under the plain error standard.

## III. Discussion

### A. The Definition of "Seaman" in the Second Circuit before *Wilander*

Prior to the Supreme Court's recent opinions in *Wilander* and *Gizoni*, this circuit's definition of "seaman" under the Jones Act was three-pronged:

> "the vessel must be *in navigation*, there must be a *more or less permanent connection* with the ship, and the worker must be aboard naturally and primarily as an *aid to navigation*."

*Salgado*, 514 F.2d at 755 (quoting *Klarman v. Santini*, 503 F.2d 29, 33 (2d Cir. 1974), *cert. denied*, 419 U.S. 1110 (1975), and *Harney v. William M. Moore Bldg. Corp.*, 359 F.2d 649, 654 (2d Cir. 1966)) (emphasis added to distinguish the prongs). For convenience, we denominate these prongs (1) the "vessel in navigation," (2) the "substantial connection," and (3) the "aid to navigation" elements.[1] The Second Circuit test very closely followed the test first adopted by the First Circuit in *Carumbo v. Cape Cod S.S. Co.*, 123 F.2d 991, 995 (1st Cir. 1941) (citations from sundry circuit courts omitted). Cases in several other circuits also had adopted essentially the same test. *See, e.g., McKie v. Diamond Marine Co.*, 204 F.2d 132, 136 (5th Cir. 1953) (defining "member of a crew" in accordance with the three-pronged test); *Wilkes v. Mississippi River Sand & Gravel Co.*, 202 F.2d 383, 388 (6th Cir.) (laborers employed in dredging operations to level off gravel pumped up from river bottom and pumped onto barges held to be seamen under the Jones Act), *cert. denied*, 346 U.S. 817 (1953); *Rackus v. Moore-McCormick Lines, Inc.*, 85 F. Supp. 185, 187 (E.D. Pa. 1949); *see also* David W. Robertson, *A New Approach to Determining Seaman Status*, 64 Tex. L. Rev. 79, 94 (1985) (the "Robertson article").

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[1] As a minor matter, we note that *Wilander* refers to this element as "aid *in* navigation." Other courts have used the phrase "aid *to* navigation." To emphasize the difference between this element and the "vessel *in* navigation" element, we use the phrase "aid *to* navigation."



### B. The Demise of the "Aid to Navigation" Element – *Wilander*

Early on, the Fifth Circuit, in *Offshore Co. v. Robison*, 266 F.2d 769, 779-80 (5th Cir. 1959), criticized the "aid to navigation" language of the three-pronged test:

> Our review of the cases shows this [aid to navigation] test has been watered down until the words have lost their natural meaning. . . . With due deference to the Supreme Court, we attach less importance to either of these catchphrases than we do to the cases piled on cases in which recovery is allowed when by no stretch of the imagination can it be said that the claimant had anything to do with navigation and is a member of the ship's company only in the sense that his duties have a connection with the mission or the function of the floatable structure where he was injured.

*Id.* at 780 (jury question raised whether roughneck as member of drilling crew was a seaman working on main deck of a mobile drilling platform or barge resting on the bottom of the Gulf of Mexico). After review of the Supreme Court and other relevant case law, the *Robison* court reformulated the criteria for seaman status:

> there is an evidentiary basis for a Jones Act case to go to the jury: (1) if there is evidence that the injured workman was assigned permanently to a vessel . . . or performed a substantial part of his work on the vessel; and (2) if the capacity in which he was employed or the duties which he performed contributed to the function of the vessel or to the accomplishment of its mission, or to the operation or welfare of the vessel in

> terms of its maintenance during its movement or during anchorage for its future trips.

*Robison*, 266 F.2d at 779 (footnote omitted).[2] Thus, the Fifth Circuit abandoned the "aid to navigation" element of the common law definition of seaman in favor of language that reflected the tendency of the courts to extend seaman status to employees who do what the Supreme Court would eventually call "the ship's work." *See Wilander*, 498 U.S. at 355.

The *Robison* test differs from the three-pronged test in two other significant respects, however. First, the *Robison* test dropped the first prong of the test, that is, the "vessel in navigation" element. Second, the *Robison* test replaced the more or less permanent connection prong of the test with the following requirement:

> the injured workman [must have been] assigned permanently to a vessel . . . or [must have] performed a substantial part of his work on the vessel.

*Robison*, 266 F.2d at 779 (footnote omitted).

Eventually, the *Robison* test became the accepted test of the Fifth Circuit. *See, e.g., Balfer v. Mayronne Mud & Chem. Co.*, 762 F.2d 432, 434 (5th Cir. 1985). This court, however, retained the three-pronged test. *See, e.g., Salgado*, 514 F.2d at 755; *Buccellato v. City of New York*, 808 F. Supp 967, 971 (E.D.N.Y. 1992). In *Johnson v. John F. Beasley Constr. Co.*, 742 F. 2d 1054, 1062-63 (7th Cir. 1984), *cert. denied*, 469 U.S. 1211 (1985), the Seventh Circuit

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[2] We note again that the jury instructions in this case are substantially based upon the *Robison* test.



attempted to highlight the difference between the two tests, focussing on the "aid to navigation" prong of the three-pronged test and the significant contribution aspect of the *Robison* test. Reasoning that the significant contribution aspect of the *Robison* test was "too broad," the Seventh Circuit adopted yet another test for seaman status – one combining the "more or less permanent connection" and the "vessel in navigation" elements of the three-pronged test and a requirement that "the person injured made a significant contribution to the maintenance, operation, or welfare of the transportation function of the vessel." *Id.* at 1063.

The Supreme Court in *Wilander* addressed the conflict between the Fifth Circuit's *Robison* test and the Seventh Circuit's *Johnson* test, *Wilander*, 498 U.S. at 340, but only as to one difference between the two tests – the aid to navigation requirement. The Supreme Court jettisoned the "aid to navigation" element, and announced that "the better rule is to define 'master or member of a crew' under the [Longshore and Harbor Workers Compensation Act], and therefore 'seaman' under the Jones Act, solely in terms of the employee's connection to a vessel in navigation." *Wilander*, 498 U.S. at 353, 354. The Court observed, that "[t]his rule best explains our case law and is consistent with the pre-Jones Act interpretation of 'seaman' and Congress' land-based/sea-based distinction." *Id.* at 354. The Court continued to write, "It is not the employee's particular job that is determinative, but the employee's connection to a vessel," *id.*, and concluded that "[t]he key to seaman status is employment-related connection to a vessel in navigation." *Id.* at 355.

In so doing, the Court adopted only so much of the *Robison* test as required that a seaman's duties " 'contribut[e] to the function of the vessel or to the accomplishment of its mission.' " *Wilander*, 498 U.S. at 355 (quoting *Robison*, 266 F.2d at 779). The Court did not adopt the *Robison* test in its entirety. Indeed, the Court cited, with apparent approval, the Robertson article which called for revision of the *Robison* test, stating that "[a]ll who work at sea in the service of a ship face those particular perils to which the protection of maritime law, statutory as well as decisional, is directed." *Id.* As we discuss more fully below, the Court did not follow *Robison*'s departure from the "vessel in navigation" element of *Salgado*. On the contrary, the Court's language, "[t]he key to seaman status is employment-related connection to a *vessel in navigation*," *id.* (emphasis added), confirms that this element remains an important part of the definition of a seaman. Also, the Court expressly noted that, "[w]e are not called upon here to define this connection in all details." *Id.* Further, the Court in *Wilander* did not state that an employment-related connection to a vessel was a complete definition of seaman. *See id.* at 355 (stating that "we hold that a *necessary* element of the connection is that a seaman perform the work of a vessel") (emphasis added). The Court offered no indication as to whether the substantiality of the connection must still be established or, if so, whether it would be determined pursuant to the "more or less permanent connection" element of the "*Johnson* test" (as well as the three-pronged *Salgado* test) or pursuant to the language of the two-part *Robison* test.



### C. The "Substantial Connection" Element after *Wilander*

As discussed above, the Supreme Court in *Wilander* did not determine under what circumstances an employment related connection with a vessel in navigation would be sufficiently substantial to qualify a plaintiff for seaman status. It is clear, however, that the Court did not express a preference for the criteria contained in the *Robison* test. Left unclear, therefore, is just what sort of connection will amount to a substantial connection. Indeed, the Supreme Court did not even recognize, much less resolve the conflict between the criteria used to determine substantial connection under the *Robison* test and those used under the *Johnson* and *Salgado* tests. Again as noted above, the Court limited its holding to the "aid to navigation" element of the three-prong test, concluding that "[t]he key to seaman status is employment-related connection to a vessel in navigation," but declined "to define this connection in all details." 498 U.S. at 355.

Nor does the Supreme Court's opinion in *Gizoni* offer much guidance in the way of what constitutes a substantial connection. In *Gizoni*, decided after *Wilander*, the Court held that a maritime worker whose occupation is one of those enumerated in the LHWCA may be nevertheless a seaman within the meaning of the Jones Act, at least where the harbor worker is also a "member of a crew of any vessel," as explained in *Wilander*. *Gizoni*, 112 S.Ct. at 491. The *Gizoni* Court quoted *Wilander* in saying that " '[t]he key to seaman status is employment-related

connection to a vessel in navigation. . . . It is not necessary that a seaman aid in navigation or contribute to the transportation of the vessel, but a seaman must be doing the ship's work.' " *Id.* at 492 (quoting *Wilander*, 498 U.S. at 355). No mention is made in either *Wilander* or *Gizoni* of the "permanent connection" language in the *Robison* case.

In this case, there is no question that Latsis at the time of his injury, was connected to a vessel in navigation, that his connection was employment-related, and that at least at the time of his injury he was "doing the ship's work," namely, action as a supervising engineer on board the vessel. In fact, it is precisely this part of the jury charge to which Chandris stipulated. Whether this connection was substantial, however, was in dispute. In charging the jury on this question, the district court appears to have adopted language from the two-part *Robison* test, instructing the jury that to find Latsis a seaman they must find that:

> First, the plaintiff was either permanently assigned to a vessel or performed a substantial part of his work on the vessel.

*See Robison*, 266 F.2d at 779 ("the injured workman [must have been] assigned permanently to a vessel . . . or [must have] performed a substantial part of his work on the vessel.") (footnote omitted). Absent disapproval by the Supreme Court, the "more or less permanent connection" formulation of the substantial connection requirement remains the law of this circuit. Therefore, it was plain error for the district court to ignore this formulation and adopt the formulation of the Fifth Circuit in *Robison*.



The formulation of substantial connection followed by this circuit in *Salgado* is quite different from that followed by the Fifth Circuit in *Robison*. The more or less permanent connection element of the *Salgado* test is not merely a temporal concept. Under *Salgado* the substantial connection element is satisfied where there is a "more or less permanent connection with the ship." *See, e.g, Salgado*, 514 F.2d at 755 (internal quotation marks omitted). Later cases expanded the "substantial connection" element to include connections not just to one particular ship, but to an identifiable group of vessels.[3] *See Magnolia Towing Co. v. Pace*, 378 F.2d 12, 13 (5th Cir. 1967) (per curiam) (pilot connected with several of defendant's tugboats held a seaman); *Braniff v. Jackson Ave.-Gretna Ferry, Inc.*, 280 F.2d 523, 528 (5th Cir. 1960) (holding that a master mechanic and an assistant who performed all maintenance, repair and overhaul work on several of defendant's ferries, often while ferries were operating, could be seamen); *see also Guidry v. Continental Oil Co.*, 640 F.2d 523, 528 n.14 (5th Cir.) ("relationship between the individual and an identifiable vessel or *group of vessels* must be substantial in point and time, not spasmodic")

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[3] The Robertson article refers to this rule as "the 'Fleet Amendment' to the *Robison* Test," 64 Tex. L. Rev. at 96. It goes on to suggest that the fleet cases present an "obvious doctrinal problem" because "[i]nvolvement with a single vessel, as opposed to multiple vessels, was one of the most obvious distinctions between the traditional seaman and the traditional longshoreman." *Id.* at 98. We cite these cases in support of the proposition that a person can be a "seaman" although he was not assigned to a particular vessel, but rather connected with several vessels or with a fleet. We do *not* adhere to the permanency requirement of these cases.

(emphasis added), *cert. denied*, 454 U.S. 818 (1981); *Rotolo v. Halliburton Co.*, 317 F.2d 9, 12-13 (5th Cir.) (injured person must have been assigned to or performed a substantial part of his work on "a particular vessel or several specified vessels.") (citing *Braniff*), *cert. denied*, 375 U.S. 852 (1963).[4]

As pointed out by Judge Glasser in *Buccellato*, the substantial connection requirement has not been interpreted by the courts of this circuit in a narrow temporal sense. *Buccellato*, 808 F. Supp. at 972. As Judge Glasser observed, *Salgado*, quoting two earlier decisions, *Klarman* and *Harney*, only required that plaintiff have a "*more or less* permanent connection with the ship." *Salgado*, 514 F.2d at 755 (emphasis added). The court in *Klarman* had noted that the permanent connection requirement has not been read strictly but meant that the connection must be more than "temporary or transitory." *Klarman*, 503 F.2d at 33 (quoting *Bullis v. Twentieth Century-Fox Film Corp.*, 474 F.2d 392, 394 (9th Cir. 1973) ("Significantly, the connection

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[4] We underscore that both the test that we last explicated in *Salgado* and the Supreme Court's *Wilander* test speak of "connection" rather than "assignment" to a vessel. We note also that the charge in question, like the *Robison* test, referred to "assignment" rather than "connection," and in this sense might have been particularly confusing to the jury because Latsis was not "assigned" to the S.S. Galileo except temporarily from time to time. Rather, he was responsible for a fleet of vessels as to which it has long been held a person may be a seaman. *See, e.g., Guidry*, 640 F.2d at 529. It is true that the instruction here did go on to say that "vessel" could be a single ship or a number of ships owned and operated by the employer, so to that extent it took the "Fleet Amendment" into account. But this caveat did not make the charge any the less confusing.



may be less than permanent, but it cannot be temporary or transitory")). In *Harney*, the court noted, but did not decide, that the permanent connection requirement may include "shore-based employees who, though regularly coming aboard, spend less than a full shift there." *Harney*, 359 F.2d at 654.

An earlier Second Circuit case, not mentioned by Judge Glasser, is even more supportive of his conclusions in *Buccellato* that "the case law in this Circuit does not unequivocally require a Jones Act seaman to be substantially connected to a vessel or group of vessels as opposed to being connected to a vessel or group of vessels on a steady basis." *Buccellato*, 808 F. Supp. at 972. That is the case of *Weiss v. Cent. R.R. Co. of New Jersey*, 235 F.2d 309 (2d Cir. 1956). There, a plaintiff who in the course of his 19-day employment worked seven days on ferry boats as a deckhand or wheelsman and on six other days was employed on shore as a doorman or bridgeman, jobs connected with the docking and departure of ferries, was held a Jones Act seaman. The court noted that weighing against his claim were the factors that he was employed aboard ship for only a short period of time, that during that period he slept and ate most of his meals ashore, that he was paid an hourly wage and worked for the most part an eight-hour day, that he was employed for part of the time on jobs ashore, that he was working on an extra-man rather than on a regular basis, and that he had no seaman's papers. 235 F.2d at 311. Further, the *Weiss* Court cited *Bailey v. City of New York*, 55 F. Supp. 699 (S.D.N.Y. 1944), *affirmed*, 153 F.2d 427 (2d Cir. 1946), which held that a ferry boat engineer who worked a regular eight-hour day and slept at home was a seaman,

as was a similar land-based dredge employee in *Pariser v. City of New York*, 146 F.2d 431 (2d Cir. 1945). *See Weiss*, 235 F.2d at 3132.[5]

Unlike the *Salgado* formulation of the substantial connection requirement, the language of the *Robison* test frames the substantial connection issue primarily, if not solely, in temporal terms. Specifically, the *Robison* test provides that:

> there is an evidentiary basis for a Jones Act case to go to the jury . . . if there is evidence that the injured workman was assigned permanently to a vessel . . . or performed a substantial part of his work on the vessel.

*Robison*, 266 F.2d at 779 (footnote omitted). Early cases applying this test recognized that "the word 'permanent' has never been assigned a literal interpretation under the Jones Act and should not be given a 'wooden application,' but rather, is to be used as an analytical starting point instead of a self-executing formula." *Guidry*, 640 F.2d at 529 (citations omitted). Through subsequent applications of this test, however, the Fifth Circuit clearly expressed its view that substantial connection is a temporal concept to be determined by the duration of the putative seaman's connection to the vessel. *Barrett v.*

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[5] Judge Nygaard, in dissent, has made a similar observation in the Third Circuit. *Evans v. United Arab Shipping Co.*, 4 F.3d 207 at 220-21 (3d Cir. 1993) (Nygaard, dissenting) ("under Third Circuit law the permanent connection factor is not a temporal relationship with any particular ship, but is employment-related and focuses instead on the nature of the worker's duties as they relate to the ship and the ship's mission at the time of the injury").



*Chevron, U.S.A., Inc.*, 781 F.2d 1067, 1074-75 (5th Cir. 1986) (en banc); *Longmire v. Sea Drilling Corp.*, 610 F.2d 1342, 1347 & n.6 (5th Cir. 1980).[6]

By adopting the *Robison* test for a substantial connection, the district court limited the jury's consideration to Latsis's temporal relation to the vessel. This substantially prejudiced Latsis. Had the jury not been instructed to determine whether Latsis's contribution to the vessel was substantial only in temporal terms of "permanent assignment" or having performed a substantial part of his work aboard the vessel, the jury could well have found Latsis to be a seaman. A jury could find that he did have a substantial connection with the vessels though he may not have been on board ship a great percentage of his time because he did the specific work of supervising the

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[6] In a dissenting opinion, Judge Rubin, joined by five other judges, took issue with the majority's narrow interpretation of the substantial connection requirement as purely temporal concept. Judge Rubin wrote:

> [a plaintiff's] status as a crew member, vel non, should be determined by considering the transitory duration or fixed term of the assignment, the nature of his duties during it, and the relationship of those duties to the mission of the vessel. Thus, a fact finder might find that an anchor handler who is assigned to work on a specific vessel for a period of days is a crew member during that assignment. A worker may also be assigned to work as a crew member for a series of voyages of limited duration. . . . An assignment to work as a crew member, like the voyage of a vessel, may be brief, and the *Robison* test is applicable in deciding the worker's status during any such employment.

*Barrett*, 781 F.2d at 1077 (Rubin, J., dissenting).

electronics systems of the ships, upgrading their computerized systems, and dealing with the computerized communication between the ships and office. Thus a jury could have found a substantial connection even though Latsis's work did not involve "permanent assignment" to a vessel or to a fleet of vessels and even if we take, as the jury might have taken, Kaparis's testimony that Latsis was on board ships only 10 percent of the time at face value. We therefore hold that the district court's instruction erroneously applied the law of this circuit regarding a core element of Latsis's claim – to the substantial prejudice of Latsis.

### D. The "Drydock Instruction"

We turn now to the district court's "drydock instruction." As noted above, the district court instructed the jury:

> In determining whether Mr. Latsis performed a substantial part of his work on the vessel, you may not consider the period of time the Galileo was in drydock in Germany, because during that time period she was out of navigation.

In so instructing, the district court seems to have injected the third prong of the old *Salgado* test – "vessel in navigation," into the substantial connection requirement. We find that this instruction further emphasized the putative seaman's temporal connection to the vessel at the risk of confusing the jury and frustrating the underlying policy of the Jones Act.

Even before the enactment of the Jones Act in 1920, Learned Hand, in extending seaman status to a bartender



on board a vessel, remarked that there is "in principle no reason why there should be an artificial limitation of rights to those engaged in the navigation of the ship, to the exclusion of others who equally further the purposes of her voyage." *The J.S. Warden*, 175 F. 314, 315 (S.D.N.Y. 1910). Judge Hand's words capture the spirit of the Jones Act, to compensate those injured in the course of work exposing them to the perils of the sea. This spirit is captured in the "vessel in navigation" element. Moreover, this element of the three-pronged test for seaman has survived *Wilander*. *See Wilander*, 498 U.S. 355 ("the key to seaman status is employment-related connection to a vessel *in navigation*") (emphasis added).

Courts have interpreted "perils of the sea" broadly. Not only may seamen recover under the Jones Act for injuries traditionally associated with the sea – a swinging boom, a sinking ship – but seamen may recover for injuries more commonly experienced by land-based employees. *See, e.g., Pace*, 378 F.2d at 12 (recovery allowed for seaman injured in automobile accident while en route to vessel). In this case, Latsis's employment did expose him to the perils of the sea – in fact, his injury was result of such a peril in the sense that while on board a seaman is very much reliant upon and in the care of the ship's physician. If that physician is unqualified or engages in medical malpractice, it is just as much a peril to the mariner on board as the killer wave, the gale or hurricane, or other dangers of the calling. Not every worker connected with a vessel is exposed to the perils of the sea, however. On the contrary, only workers connected to a "vessel *in navigation*" are so exposed – even if the exposure results in nothing more than an injury sustained

while driving to the vessel. *See id.* The "vessel in navigation" element, therefore, does not limit the substantiality of an employee's connection with a vessel. Rather, the "vessel in navigation" element was designed to limit seaman status to those whose employment regularly exposes them to the hazards of the sea.

We note that the case upon which the district court evidently relied, in instructing the jury that in considering the substantial connection element it should discount the time during which the Meridian, formerly the S.S. Galileo, was in drydock in Germany, involved an accident while the vessel was in drydock and, hence, not in navigation. *See McKinley v. All Alaskan Seafoods, Inc.*, 980 F.2d 567, 569-70 (9th Cir. 1992). *McKinley* may properly be read as holding that a ship undergoing complete conversion, as the vessel was in that case, takes a vessel out of navigation. *See West v. United States*, 361 U.S. 118, 121 (1959) (per curiam) (non-Jones Act case finding no warranty of seaworthiness while vessel was undergoing major structural repairs). But this does not necessarily mean that the time during which a vessel is undergoing conversion cannot count towards the substantiality of an employment-related connection with the vessel. During the course of Latsis's employment with Chandris – omitting the consulting time – from approximately March of 1989 until his termination in November, 1990, he spent some six months working seven days a week on board the vessel, supervising the project as the only naval architect, including the drydocking, bottom removal, cleaning and removal of the propellers, overhauling the main engines, rebuilding the boilers, and reconstructing the accommodation spaces and public rooms. Why this time



should not count in terms of determining the substantiality of his connection to the Chandris vessels, we do not know. While we express no opinion as to whether Latsis would have been covered had he been injured while the vessel was in drydock in Bremerhaven, we do suggest that in terms of meeting any requirement of connection to the vessel or vessels, this time can count.

## IV. CONCLUSION

Although *Salgado*'s formulation of the substantial connection element remains the law of this circuit after *Wilander* and *Gizoni*, we think it useful to clarify this formulation in light of *Wilander* and *Gizoni*. Such clarification is made all the more pressing by the fact that although *Wilander* and *Gizoni* left *Salgado*'s formulation of the substantial connection requirement intact, the Supreme Court in those cases did jettison another aspect – the aid to navigation element – of that test.

Clarification is also important considering that the Fifth Circuit has continued to adhere to its narrow interpretation of the substantial connection requirement. In *Bach v. Trident Steamship Company, Inc.*, 920 F. 2d 322 (5th Cir.), *vacated*, ___ U.S. ___, 111 S. Ct. 2253 (1991), two members of the panel held that a compulsory pilot was not a seaman because he was not connected to a vessel or an identifiable fleet of vessels, and refused to find an exception in favor of a maritime worker who spends virtually all of his time performing traditional seaman's duties – work closely related to the movement of vessels – but does his work on short voyages aboard a large number of vessels. Judge Brown dissented, stating that

Congress did not mean to exclude from the protection of the Jones Act compulsory pilots while aboard in directing the navigation of a vessel. *See Bach*, 920 F.2d at 327-33 (Brown, J., dissenting). The Supreme Court vacated the opinion and remanded for reconsideration in light of *Wilander*. ___ U.S. at ___, 111 S. Ct. at 2253. The panel majority reinstated its decision, holding that it had previously "concluded that [the pilot] was not a seaman because he was not permanently assigned to any particular vessel or fleet of vessels." *Bach v. Trident S.S. Co., Inc.*, 947 F.2d 1290, 1291 (5th Cir. 1991), *cert. denied*, 112 S. Ct. 1996 (1992). Judge Brown again dissented, stating that "although *Wilander* turns out not to be the decisive guide," what it does say affords "undeniable support" to the views he had set forth in his initial dissent. *Bach*, 947 F.2d at 1291 (Brown, J., dissenting). In addition, he quoted the *Wilander* case extensively and we may read him as saying that at least in the case of a pilot and his unique status as a seagoing functionary, the requirement of "permanency" set forth in the various cases as a part of the test is simply no longer of force and effect, at least in the temporal sense.

The substantial connection requirement has two purposes. First, by requiring a "more or less permanent connection *with a vessel*" or with a fleet of vessels, it excludes from Jones Act seaman status workers whose work may bring them into contact with many vessels but who are not connected with any particular vessel or identifiable group of vessels. Through this exclusion, the substantial connection element leaves workers with no connection to a particular vessel or group of vessels to coverage under the Longshore and Harbor Workers'



Compensation Act (LHWCA) – from which "seaman" or, more precisely, "a master or member of a crew of any vessel" are themselves excluded. 33 U.S.C. § 901 *et seq.* (1988). Second, by requiring a "*more or less permanent connection* with a vessel" or fleet of vessels, it excludes from coverage those whose contribution, although limited to a single vessel or fleet of vessels, was nevertheless only a temporary or transitory connection with the vessel. *See Klarman*, 503 F.2d at 33 (putative seaman's connection must be more than "temporary or transitory").

It seems that much of the confusion surrounding "more or less permanent connection with a vessel" language is attributable to the fact that the language is designed to perform two functions – i.e., exclude two different types of workers from seaman status. *See Buccellato*, 808 F. Supp. at 972. Indeed, the Fifth Circuit's adherence to a narrowly interpreted permanent assignment requirement has been criticized by the Supreme Court of Louisiana on essentially this ground. *Folse v. W. Atlas Int'l, Inc./Downhole Seismic Servs.*, 593 So. 2d 341 (La. 1992). In *Folse*, the plaintiff had been held by the Louisiana Court of Appeal not to be a seaman because he was not permanently attached to a specific vessel or an identifiable fleet of vessels. *See Folse v. W. Atlas Int'l, Inc.*, 580 So. 2d 482 (La.App. 4th Cir. 1991), *rev'd*, 593 So.2d 341 (La. 1992). In reversing, the Supreme Court of Louisiana discussed the permanent attachment language of *Robison* and *Bach*, saying that "[t]his requirement was designed to distinguish between transitory, land-based employees and those working aboard a vessel for a voyage." 593 So. 2d at 343 (citing the Robertson article). The majority pointed out that *Wilander* did not mention more or less

permanent attachment to a vessel or fleet of vessels,[7] and that *Gizoni* cast further doubt on this requirement because Gizoni "only 'rode' the platforms during working hours." *Id.* The Louisiana court went on to say that Folse was not a land-based worker providing shore services to docked vessels but rather a seaman who went to sea on specific short voyages and who was not merely a transitory employee. The court went on to say that although Folse's assignment was less transient than Bach's, it was not permanent. Rather, "[i]t involved substantial work on given missions." *Id.*[8]

We find that much confusion could be alleviated by breaking down the "more or less permanent connection with a vessel" language into two separate elements. Thus, the substantial connection requirement is met where the putative seaman establishes an employment-related contribution that is (1) limited to a single vessel or group of vessels and (2) substantial in terms of its (a) duration and (b) nature. In considering whether the putative seaman's contribution is substantial in terms of its duration, the jury may consider the number and frequency of similar contributions to that vessel or to an identifiable fleet of vessels. Further, in considering whether the contribution

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[7] Justice Dennis, concurring in the *Folse* majority, suggested "that the *Robison* requirement of permanent attachment is subsumed in the greater definition of *Wilander* that to qualify as a seaman, an employee must contribute to the function of a vessel." 593 So. 2d at 344 (Dennis, J., concurring).

[8] The same is true of Latsis, except that on shore Latsis was directly involved with the electronic communications and equipment of the Chandris fleet, surely of considerable importance to their navigation.



is substantial in terms of its nature, the jury may consider the amount of time and effort spent ashore preparing for the contribution, as well as the amount and time and effort spent in drydock consummating the contribution.

We reiterate that after *Wilander* and *Gizoni* the test of seaman status under the Jones Act is an employment-related connection to a vessel in navigation. The test will be met where a jury finds that (1) the plaintiff contributed to the function of or helped accomplish the mission of, a vessel; (2) the plaintiff's contribution was limited to a particular vessel or identifiable group of vessels; (3) the plaintiff's contribution was substantial in terms of its (a) duration or (b) nature; and (4) the course of the plaintiff's employment regularly exposed the plaintiff to the hazards of the sea.

In this case, the first of the foregoing criteria was stipulated to. As to the second, there is no dispute in the evidence and the verdict should accordingly be directed. The third – the substantiality element – is not only in dispute, but the evidence is not clear as to what extent Latsis's land-based and drydock work bore on (3)(b). Therefore, we instruct the trial court to frame its instructions to the jury in light of *Wilander* and *Gizoni* and other cases and opinions above referred to, not in terms of assignment to a vessel or as requiring permanency but, rather, in terms of the employment-related connection to the Chandris fleet. The jury also should be instructed that in determining what is "substantial" in terms of the duration of Latsis's contribution to the vessel or fleet of vessels, the number and frequency of similar contributions may be taken into account. Further, the jury should also be instructed that in determining what is "substantial" in

terms of the nature of Latsis's contribution, Latsis's onshore preparation should be taken into account, as well as the time Latsis spent in drydock in Bremerhaven, Germany consummating his contribution. Finally, the jury should also be instructed to determine whether the course of Latsis's employment regularly exposed him to the hazards of the sea. As to the proof of these matters, the putative seaman of course has the burden.

Judgment vacated, case remanded for retrial with instructions to the jury in accordance with this opinion.

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*Latsis v. Chandris, Inc.*
No. 93-7704

MAR 24 1994

**UNITED STATES COURT OF APPEALS**
**SECOND CIRCUIT**
**FILED: MAR 24 1994**
**GEORGE LANGE III, CLERK**

KEARSE, *Circuit Judge*, dissenting:

I respectfully dissent.

Though I agree that the four criteria articulated by the majority *ante* at 31-32 should govern the determination of whether an employee is a "seaman" within the meaning of the Jones Act, even under that formulation I am unpersuaded that the non-dry-dock part of the district court's instructions, to which Latsis made no objection, constituted "plain" error. Further, I am unpersuaded



that the district judge erred in instructing the jury that, in determining whether plaintiff Latsis was a seaman, it should disregard the period during which the *Galileo* was in dry dock. The Jones Act concept of " 'seaman' " contains a "land-based/sea-based distinction." *McDermott International, Inc. v. Wilander*, 498 U.S. 337, 354 (1991). The $65 million-dollar dry-dock conversion and reconstruction of the *Galileo* was unquestionably a land-based activity. In my view, this part of the instructions – the only part to which Latsis objected – was correct.

Accordingly, since in my view the only portion of the instructions to which Latsis objected was not erroneous, and since the remainder of the instructions did not constitute plain error, I would affirm.

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UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

**UNITED STATES COURT OF APPEALS**
**SECOND CIRCUIT**
**FILED: MAY 24 1994**
**GEORGE LANGE, III, CLERK**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the day of May on thousand nine hundred and ninety four

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Antonios Latsis,
Plaintiff-Appellant,
-v-
Chandris, Inc., Chandris, S.A.,
Trans Oceanic Shipping Co., Ltd.,
Defendants-Appellees.

DOCKET
NUMBER 93-7704

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A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by

**Appellees Chandris, Inc., Chandris, S.A. and Trans Oceanic Shipping Co., Ltd.**

Upon consideration by the panel that decided the appeal, it is

Ordered that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in



regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

FOR THE COURT,
GEORGE LANGE III, Clerk

By: /s/ _____
Carolyn Clark Campbell
Chief Deputy Clerk

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